

## THE HUMAN RIGHT TO WATER: DUTIES AND RIGHTS FULFILLMENT STRATEGIES

THE HUMAN RIGHT TO WATER: DUTIES AND RIGHTS FULFILLMENT STRATEGIES

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A thesis submitted to the School of Graduate Studies in Partial Fulfillment of the Requirements  
for the Degree Masters of Arts

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McMaster University MASTER of ARTS (2016) Hamilton, Ontario (Philosophy)

TITLE: The Human Right to Water: Duties and Rights Fulfillment Strategies

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NUMBER OF PAGES: vi, 110

## ABSTRACT

In this thesis I argue that access to an adequate quantity and quality of safe water in sustainable ways is a basic moral human right, one that has been legally recognized by the international community through UN Resolution 15/9. As a result of water's being a basic moral human right, governments, institutions, and individuals are obligated to avoid depriving, protect from deprivation, and aid those deprived of access to safe drinking water. Using this as a foundation, I examine the Millennium Development Goals, the Sustainable Development Goals, and water pricing as strategies used to fulfill the right to safe drinking water. I also provide arguments in favour of (national and international) tax schemes that cover the cost of providing 50L of safe water per person per day.

## ACKNOWLEDGEMENTS

This thesis would not have been possible without the expertise and support of my supervisors, Violetta and Adeel, and my second reader, Elisabeth. Thank you for the time, effort, and advice given throughout my Masters.

Rabia and Kim, your hard work in the Philosophy Department does not go unnoticed. Thank you for all that you do to keep the department running smoothly.

Sean, thank you for all that you do.

Finn, your love of attention was always a welcome distraction.

To my friends and family, thank you for your support and encouragement over the years.

And to dad and mom, thank you for teaching me the importance of asking questions and perseverance. Without you this thesis would never have been possible. Sláinte!

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## Introduction

Secure and sustainable access to safe drinking water is a pressing issue for international diplomacy. Access to safe drinking water, oft taken for granted in wealthy nations, became an internationally recognized right in 2010 through United Nations Resolution 15/9.<sup>1</sup> Resolution 15/9 asserts that States should ensure that non-State service providers (providers who are outside of the public sector (national and international nongovernmental organizations)) “fulfill their human rights responsibilities throughout their work processes, including by engaging proactively with the State and stakeholders to detect potential human rights abuses and find solutions to address them.”<sup>2</sup> States are also called upon “to develop appropriate tools and mechanisms... including financial ones, to achieve progressively the full realization of human rights obligations related to access to safe drinking water and sanitation, including in currently unserved and underserved areas.”<sup>3</sup>

This thesis argues for at least two main claims. First, safe drinking water is a basic moral human right meaning that institutions, governments, and individuals are obligated to avoid depriving, protect from deprivation, and aid those deprived of access to safe drinking water. Second, this thesis examines several strategies used in the fulfillment of the right to water including the Millennium Development Goals, the Sustainable Development Goals, and water pricing. I argue that water pricing does not always result in rights violations; however, extreme caution should be taken when using such strategies to ensure the pricing of water does not indirectly or directly result in people being deprived of their right to water.

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<sup>1</sup> United Nations Human Rights Council. 15/9. Human rights and access to safe drinking water and sanitation. October 2010.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.



The first chapter of this thesis aims to explain the reasons why safe drinking water ought to be considered a *moral* right, rather than only a legal one, and a *basic* right. Because moral rights exist independently of legal recognition, establishing water as a moral right allows us to understand the importance of safe water even if governments and international organizations fail to legally recognize the right or fulfill this right. If safe water can be established as a moral right then regardless of whether governments oppose the legal right it is still possible to argue in favour of the right on moral grounds. Moral claims for the right to water may motivate policymakers to formulate policy that leads to the fulfillment of the legal right to water. Chapter one also explains why safe drinking water ought to be considered a *basic* right since basic rights are those that one can at minimum demand to be fulfilled. Chapter two argues the right to safe drinking water remains unfulfilled and, consequently, attempts to answer questions about who ought to fulfill the duties to respect, protect and aid in the case of the right to water. Chapter three discusses the role of the United Nations in the fulfillment of the right to safe drinking water. Specifically, the role of the Millennium Development Goals and the Sustainable Development Goals as strategies for the fulfillment of the right to safe drinking water are examined. While fulfillment of the MDGs and SDGs is not the responsibility of the UN (it is the responsibility of its member states), the UN does play a pivotal role in supporting and assisting, as requested, the member states in their achievement of the global goals. Chapter four examines the role of water pricing as a strategy for fulfilling the right to water. In the final section of this thesis, I argue the tax base or other forms of public revenue, where feasible, should be used to cover the cost of a minimum amount of safe drinking water. Under the current global order it may not be economically possible for many nations to cover the cost of a minimum amount of water, especially in the global south; however, a restructuring of the global order could enable

nations in the global south to use their public revenue to provide access to a minimum amount of safe drinking water for their citizens.

Ultimately, this thesis argues that safe drinking water is a basic moral human right and institutions, governments, and individuals have certain obligations, varying in degree, in ensuring the right is realized. All global parties should refrain from acting in ways that violate the right to water and when violations do occur remedial duties arise. This thesis does not explicitly argue for the right to sanitation, though the right to sanitation is considered to be an integral part in securing the right to water. The majority of this thesis deals strictly with the right to safe drinking water but at times, especially in the final sections, I argue that governments should provide the minimum amount of water needed for subsistence which includes, among other things, the water necessary for sanitation purposes through public revenue.

# Chapter 1

## Access to Water as a Basic Moral Human Right

In July 2010, the United Nations formally recognized the right to “safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.”<sup>4</sup> Subsequently, the Human Rights Council entered the right to water and sanitation into international law through Resolution 15/9.<sup>5</sup> This chapter examines (i) the basis on which one can rightfully claim there is a *moral* right to water and its importance as a moral right; and (ii) the basis on which the right to water is also a *basic* right. To begin, I outline the terms global north and global south and their importance for the overall discussion of this thesis. Second, I consider what it means for something to be a *moral* right. Finally, I examine the basis for asserting something as a *basic* right and extrapolate this logic to conclude that a minimum 25-50 litres of safe water/person/day is necessary to meet subsistence needs, 5 litres of which is required for drinking water. Ultimately, I conclude the water required for basic subsistence is a moral and basic human right.

### **1.1 The Failings of the Terms “Developed” and “Developing” Nations**

To ground my discussion of the right to water, I first need to outline the terms traditionally used to describe nations in human rights literature. Conventionally, nations are described as “developed” or “developing.” Throughout this thesis, however, I use the terms “global north” and “global south” to describe nations rather than “developed nation” and “developing nation” because of the criticisms of the latter.

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<sup>4</sup> United Nations General Assembly. 64/292 *The Human Right to Water and Sanitation*. 2010. A/RES/64/292.

<sup>5</sup> United Nations Human Rights Council. 15/9. Human rights and access to safe drinking water and sanitation. October 2010.

Most literature on rights and duties, and international organizations widely accept and utilize the terms “developed” and “developing” when describing countries. The UN Department of Economic and Social Affairs states “there is no established convention for the designation of “developed” and “developing” countries or areas in the United Nations systems.”<sup>6</sup> However, individuals, governments, and nongovernmental organizations do commonly understand certain regions and countries as developed (e.g., North America, Japan, Australia) or developing (e.g., Uganda, Guatemala, and Pakistan)<sup>7</sup> depending on the perceived wealth of the nation. Economically speaking, developing countries are those countries whose Gross National Income is less than \$11,905 USD per capita.<sup>8</sup> Nevertheless, an economic analysis alone does not accurately display development in countries.

The Human Development Index (HDI) is another indicator commonly used to measure a country’s global standing when it comes to development. The HDI is a more comprehensive way of measuring a nation’s development and emphasizes “that people and their capabilities should be the ultimate criteria for assessing the development of a country, not economic growth alone.”<sup>9</sup> The HDI ranks nations as low, medium, or high using data about a nation’s income per capita, education, and health. Using this information, the HDI can help us understand how two countries with the same GNI per capita have different human development outcomes and this information

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<sup>6</sup> "United Nations Statistics Division- Standard Country and Area Codes Classifications (M49)." United Nations Statistics Division- Standard Country and Area Codes Classifications (M49). 2014.

<sup>7</sup> Ibid.

<sup>8</sup> Hans Lucas, ‘Developing Countries,’ 2014. *Isi-Web.Org*,

<sup>9</sup> United Nations Development Programme, "Human Development Reports." Human Development Index (HDI). 2015. Accessed May 27, 2016. <http://hdr.undp.org/en/content/human-development-index-hdi>.

is used to spark debate over national policy choices and government priorities.<sup>10</sup> Often, developed nations, as a result of their economic successes, have effective social programs including basic healthcare, a functioning education system, and other so-called social safety nets which gives them a high human development status. Conversely, because of the limited funds in developing countries (because of poor allocation of funds) governments are often unable to provide the same services as developed nations, resulting in lower standards of living and a low HDI ranking.

The terms “developed” and “developing” nations are subject to criticism because the distinction assumes that all countries desire to be in the same economic and social position as the USA (developed). Obviously, this is not the case. Many countries, including Cuba, do not desire to have a capitalist economic system and instead opt for an economic system more aligned with communist or socialist values. Additionally, this developing-developed distinction gives rise to vulnerabilities when we consider how nations interact with one another. Developed nations and international institutions take on a parental role when interacting with developing nations leading to increased dependency on the part of the developing nation.<sup>11</sup>

To avoid the problems associated with the terms developed and developing nations, I opt instead to use the terms global north and global south. Generally, countries in the southern hemisphere are considered a part of the global south while nations in the northern hemisphere are part of the global north. Canada, Australia, and Japan are considered to be a part of the global north while Uganda, Guatemala, and Pakistan are part of the global south. The terms “global

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<sup>10</sup> Ibid.

<sup>11</sup> Developed nations and international institutions often take control of a developing nation’s economic system and *advise* them on how to better handle their finances, political system, and citizens.

north” and “global south” are better received than the terms “developed” and “developing” and overcome the criticisms of the latter. Whereas “developed” and “developing” suggest a kind of linear progression (least developed → developing → developed), the terms “global north” and “global south” allow for different kinds of development with no specific endpoint since countries are constantly evolving. While the terms “global north” and “global south” are subject to their own limitations,<sup>12</sup> I find they are more appropriate when discussing international development and rights.

## **1.2 What is a Right?**

Rights are typically classified as: (i) moral rights; and (ii) legal rights.<sup>13</sup> A moral right, according to Henry Shue, “provides (1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats.”<sup>14</sup> Moral rights allow us to make justified demands for the enjoyment of some right X that is socially guaranteed. When human rights are considered moral rights, one is able to criticize oppressive regimes for rights violations even if the regime does not “accept human rights or recognize them in their legal systems.”<sup>15</sup> Since human rights are typically thought to exist independently of legal norms or governmental recognition they can be recognized in some instances as moral rights.<sup>16</sup> If water is a moral right then one can argue a government is violating the right to water even if the

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<sup>12</sup> Not all countries understood as a part of the global north are physically located in the northern hemisphere. Australia is considered a part of the global north but is geographically located in the southern hemisphere.

<sup>13</sup> Allen Buchanan, *The Heart of Human Rights*, New York, NY: Oxford University Press, 2013; James W. Nickel, *Making Sense of Human Rights*. 2<sup>nd</sup> ed., Malden, MA: Blackwell Publishing, 2007; Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*. 2nd ed. Princeton, N.J.: Princeton University Press, 1996.

<sup>14</sup> Shue, 1996: 13.

<sup>15</sup> Nickel, 2007, 45.

<sup>16</sup> Ibid., 9-10

government has not enacted legislation regarding access to safe water or if the government refuses to accept that access to safe water is a human right.

A legal right, however, need not be a moral right.<sup>17</sup> Legal rights and moral rights often overlap but it is not the case that every legal right is directly correlated to a specific moral claim. Legal rights are rights that have been entrenched in domestic or international law and are, therefore, protected by law. Legal recognition of a moral human right is important but “legal enactment is neither necessary nor sufficient for the realization of human rights” given that legal enactment sometimes does little to nothing in guaranteeing the fulfillment of the right.<sup>18</sup>

In due course, I discuss the ways national governments and international institutional bodies recognize the existence of moral rights and how these rights, including the right to water, have become legal rights. The focus of this thesis is largely that of moral human rights for two reasons. First, moral rights shape the system of legal rights. Moral rights play a significant role in shaping legal human rights and they specify the kinds of obligations we have to certain rights; a topic this thesis discusses at great length. Second, access to water is already a legal right and yet it remains largely unfulfilled. Thus, a rich discussion about the importance of water as a moral right may persuade us that we have obligations and that we ought to fulfill them.

If we understand a moral right in the sense Shue suggests, that it is a justified demand for the actual enjoyment of a substance that is socially guaranteed against standard threats, we must unpack this definition to appreciate its significance. Having a right allows an individual to make demands of others and provides a justification for the basis of why that individual’s demands ought to be recognized and fulfilled. When a person demands their right be fulfilled and others

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<sup>17</sup> For example, the right to WiFi is considered a legal human right but is it also a moral human right?

<sup>18</sup> Nickel, 2007 51.

recognize this demand, the inherent dignity of the rights claimant is acknowledged. We see that individual as a human being who is capable of making a demand that their rights be met. When a rights claim is recognized the “persons, as actual or potential claimants, are dignified objects of respect, both in their own eyes and in the view of others.”<sup>19</sup> The fact that one can demand the fulfillment of one’s own rights shows a certain degree of respect for oneself and respect from the larger community. When I see myself as a potential or actual rights claimant, I respect my inherent dignity and am able to see others as rights claimants and respect them as such. That I can reasonably demand access to safe drinking water enables me to understand that others, wherever they may be, also have the ability to justifiably make this demand of others.

But from whom can I claim my rights? Individuals can reasonably demand their rights be met from the remainder of humanity. That I can justifiably demand something of others stems from the fact that we are all humans and require the same basic necessities to lead dignified lives. I do not intend to claim that all persons have a duty to fulfill the rights demands of all others. I am arguing that we are not limited to demand that our rights be fulfilled from only our compatriots or our own government.<sup>20</sup> While we should demand our government fulfill our rights claims, we can also demand the fulfillment of our rights from others if our nation is unable or unwilling to fulfill our rights. Moreover, one can justifiably claim that we can make demands of non-compatriots because of the effects of globalization.<sup>21</sup> There are strong reasons to believe that the global north, in many respects, is morally indebted to the global south and so is obligated to

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<sup>19</sup> Shue, 1996, 15.

<sup>20</sup> I find arguments for duties of compatriots to be shaky because of the problems of determining who a compatriot is. Fellow citizens? Members of the same institutions? Members of the same global order? The compatriot claim is not as straightforward as it often appears. However, this is not to dismiss the idea that individuals should demand fulfillment of their rights from their own government and fellow citizens first. Chapter two addresses this problem more fully.

<sup>21</sup> See Gillian Brock 2005, 2008a, 2008b and 2015.



help fulfill their rights because of the history of exploitation, manipulation, colonialism, and imperialism.<sup>22</sup>

The second part of Shue's definition states that a moral right provides the demand for the actual enjoyment of whatever the substance of the right consists of. A right enables me to not only make a demand on others, but to demand the conditions that make the enjoyment of that right possible. I can only have the right to some object X, if I can actually enjoy object X. Thus, in order for me to have the right to safe drinking water, I have to actually be able to have access to sustainable amounts of safe water.

Shue notes, however, the mere proclamation of a right does not entail the right is being fulfilled; though, the proclamation of a right may certainly act as a stepping-stone towards the fulfillment of the right. The proclamation of a right does not entail the fulfillment of that right since the proclamation can sometimes be used as a substitute for the fulfillment of that right.<sup>23</sup> When a right, like the right to safe drinking water, is proclaimed, it is up to the proper authorities and institutions, whether national or international, to take the necessary steps in ensuring the right is fulfilled. To view the proclamation of the right to water as the fulfillment of the right is to hold an empty conception of rights, and essentially makes rights of little concern.<sup>24</sup>

In July 2010, the United Nations explicitly recognized the right to "safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human

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<sup>22</sup> See Pogge, 2011 and 2005; Miller 2009. This discussion will be taken up more thoroughly in Chapter two.

<sup>23</sup> Pogge, 2011.

<sup>24</sup> Charles R. Beitz and Robert Goodin, "Introduction: *Basic Rights and Beyond*," in *Global Basic Rights*, edited by Charles R. Beitz and Robert E. Goodin, 1-24. Oxford: Oxford University Press, 2009.

rights.”<sup>25</sup> In recognizing the importance of safe water, the UN took an important step by endorsing the right to water as a human right in international law. In order to prevent Resolution 64/292 from merely paying lip service to the right to water, the final component of Shue’s rights definition is needed: a social guarantee.

For Shue, the social guarantee is the most important aspect of a right because the social guarantee creates the correlative duties.<sup>26</sup> For something to be a right, other people must make “some arrangements so that one will still be able to enjoy the substance of the right even if – actually, especially if – it is not within one’s own power to arrange on one’s own to enjoy the substance of the right.”<sup>27</sup> The social guarantee acts as a safety net whereby if someone is unable to secure the substance of a right then society steps in to secure the right for that person. If we understand rights in the way Shue intends, then it follows that the “relevant other people have a duty to create, if they do not exist, or, if they do, to preserve effective institutions for the enjoyment of what people have rights to enjoy.”<sup>28</sup> If our global institutions are unjust and ineffective at fulfilling rights, which they are, then it is our duty, as citizens of the world, to create institutions that are better suited to fulfill rights.

A critical aspect of Resolution 64/292 is the calling upon of states and international organizations to provide help, particularly to nations in developing regions,<sup>29</sup> in scaling up “efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all.”<sup>30</sup>

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<sup>25</sup> United Nations General Assembly. *64/292 The Human Right to Water and Sanitation*. 2010. A/RES/64/292.

<sup>26</sup> Shue, 1996, 16.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid., 17.

<sup>29</sup> The Resolution uses the terms developing/developed rather than global north/south.

<sup>30</sup> United Nations General Assembly. *64/292 The Human Right to Water and Sanitation*. 2010. A/RES/64/292.

In 2010, the UN also announced the success of the Millennium Development Goal (MDG) on drinking water making it appear as if we were well on our way to socially guaranteeing the right to water. Varying interpretations of data and methods of measurement, however, make it difficult to assert the right has been fulfilled to the extent that some have suggested. The Joint Monitoring Programme for Water Supply and Sanitation (JMP) estimates that 783 million people used unsafe water in 2010.<sup>31</sup> A 2013 UN report also says 783 million people used unsafe water but adds that despite over 2 billion people gaining access to an improved water source since 1990 “1.8 billion of those who gained an improved source still use water known to be unsafe to drink.”<sup>32</sup> Using data extrapolation, Onda et al. argue the total number of people using unsafe water worldwide is about 3 billion people (783 million using unimproved sources, 1 billion using faecally-contaminated water from improved sources, and 1.2 billion receiving water from sources at risk of faecal contamination).<sup>33</sup> All of this to say, globally-recorded data do not describe exactly how many people are using unsafe water, how many people are at risk of contaminated water, or how many people have sustainable access to an adequate quantity of safe water. This raises questions about whether we can say the right to safe drinking water is socially guaranteed (available in adequate quantity, quality, and sustainability) or is on its way towards being socially guaranteed in the sense Shue requires.

For Shue, a right has not been fulfilled “until arrangements are in fact in place for people to enjoy whatever it is to which they have the right,” in this case, safe water.<sup>34</sup> Shue’s social

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<sup>31</sup> Kyle Onda, Joe LoBuglio and Jamie Bartram, “Global Access to Safe Water: Accounting for Water Quality and the Resulting Impact on MDG Progress,” *International Journal of Environmental Research and Public Health* 9, no. 3 (2012): 881.

<sup>32</sup> United Nations. *The Post 2015 Thematic Consultation Report*, 2013, 12.

<sup>33</sup> Onda et al., 2012, 887.

<sup>34</sup> Shue, 1996, 16.

guarantee means there must be a reasonable level of guarantee rather than everyone having their right fulfilled.<sup>35</sup> If we take Onda et al.'s estimate of 3 billion people using unsafe water then the MDG target has not been met and the right to water is still not socially guaranteed for many populations around the world since just less than half of the world's population lacks access to safe water. If a significant portion of the global population drinks unsafe water then in no way can we say the right to water is socially guaranteed, though we may be moving in the right direction. Thus, the UN declaration of safe drinking water as a human right may not serve as a stepping-stone towards the actual fulfillment of this right unless international and domestic institutions take the necessary steps in fulfilling the right. This is not to say the right is not socially guaranteed until virtually everyone consumes safe drinking water; rather, arrangements must be in place, internationally and domestically, that provide people with meaningful access to safe drinking water so they can enjoy their right to water.

### **1.3 Basic Rights**

Having outlined what a moral right is and why access to water is a moral right, the focus now shifts to that of basic rights. Rights can be split into basic rights and non-basic rights, with the former being the subject of this thesis. Basic rights are a "shield for the defenseless... a restraint upon economic and political forces... [the] social guarantees against actual and threatened deprivations... and [they are] an attempt to give to the powerless a veto over some of the forces that would otherwise harm them the most."<sup>36</sup> Basic rights provide the line "beneath which *no one* is allowed to sink."<sup>37</sup> They are those rights that are essential to the enjoyment of all other

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<sup>35</sup> Ibid.

<sup>36</sup> Shue, 1996, 18.

<sup>37</sup> Ibid. emphasis added.

rights.<sup>38</sup> Certain rights are basic because without guarantees to them one would be unable to secure any other rights and so basic rights are rights we can reasonably demand from others if we can demand nothing else. Thomas Pogge furthers this idea by claiming that the assertion of something as a human right means one is claiming (i) the right has great importance and is something human beings should have secure access to; and (ii) the right justifies duties on other humans to ensure secure access to the object of that particular right.<sup>39</sup>

For Shue, there are at minimum three basic rights: (i) the right to physical security; (ii) the right to subsistence; and (iii) the right to at least some liberties.<sup>40</sup> This is not to say there are no other basic rights; rather, these are, as of now, the only basic rights we can assert and even this is arguable. According to Shue, the enjoyment of any of these basic rights is essential for the enjoyment of all other rights. The enjoyment of, for example, the right to free assembly cannot be secured without the fulfillment of the right to security, the right to subsistence, and the right to at least some liberties.

If a person is suffering from starvation it will be extremely difficult for them to exercise their other rights in any meaningful way and ultimately they may die prematurely from their unmet subsistence needs. Individuals are less likely to exercise freedom of assembly when they are unable to secure their rights to security and subsistence. In circumstances where a person cannot meet their subsistence needs, the person will likely be focused on surviving and not on exercising other rights. Significant amounts of that person's time and energy will be focused on securing their basic needs and may keep them from exercising other supposed rights.

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<sup>38</sup> Ibid., 19.

<sup>39</sup> Thomas W. Pogge, "Are We Violating the Human Rights of the World's Poor?" *Yale Human Rights and Development Journal* 14, no. 2 (2011): 4.

<sup>40</sup> Shue, 1996.

Subsistence rights give individuals what is necessary for “a decent chance at a reasonably healthy and active life of more or less normal length, barring tragic interventions.”<sup>41</sup> Thus, we have the right not to starve to death or die from highly preventable illnesses, including waterborne illnesses and diarrhoeal diseases. The right to subsistence includes access to unpolluted air, unpolluted water, adequate food, shelter and clothing, and minimal preventative public healthcare.<sup>42</sup>

When hearing about basic rights, some might argue there must be a *most* basic right through which its fulfillment allows persons to access all of their rights. Perhaps safe drinking water is the most basic of rights because it is necessary for the enjoyment of *all* other rights and Resolution 64/292 does state that water is essential for the enjoyment of all life and all human rights.<sup>43</sup> When examining Shue’s basic rights, it may be possible to argue that the fulfillment of the right to water is necessary for securing the right to physical security. One cannot enjoy freedom of expression when one is dying of thirst or ill from unsafe water. One cannot have secured their other subsistence rights without having one’s right to water fulfilled. Hence, it could be argued that water is the most basic of all other rights. To argue in this way, however, is problematic and fails to account for the complexity of the relationship between basic rights.

While it is true that food cannot be grown without water and healthcare cannot be enjoyed without safe water, it is false to conclude that water is the most basic human right since a *most basic right* does not follow from the argument Shue presents. Consider that in many regions water collection is primarily the role of women, especially in places where one must travel to the

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<sup>41</sup> Shue, 1996, 23.

<sup>42</sup> Ibid.

<sup>43</sup> United Nations General Assembly. *64/292 The Human Right to Water and Sanitation*. 2010. A/RES/64/292.

water source. Women are subjected to increased rates of violence because of their vulnerability when travelling to water and sanitation sites.<sup>44</sup> Thus, the right to security is vital in having access to safe drinking water and the right to subsistence fulfilled. In this way we should understand the fulfillment of all basic rights as required for the fulfillment of both basic and non-basic rights. Basic rights are not just instrumental in exercising non-basic rights; they are not merely a means to an end. Having our basic rights fulfilled is a critical part of our being able to actually exercise other rights. Basic rights are valuable in and of themselves independent of the fact that basic rights enable us to exercise our other non-basic rights. Simply, Shue's argument for basic rights takes the following form:<sup>45</sup>

- (1) Everyone has a right to something;
- (2) Some other things are necessary for enjoying the first thing as a right, whatever the first thing is;
- (3) Therefore, everyone also has rights to the other things that are necessary for enjoying the first thing as a right.

Following this logic, if one has the right to education then one also has the right to the things necessary for enjoying that right including the rights to physical security, subsistence, and some forms of liberty. Strictly speaking, one would need to have one's right to water not only recognized but also fulfilled if one was to be able to enjoy the right to education. This is because individuals who drink unsafe water or lack access to water often miss school forcing them to fall behind in their education and, perhaps eventually, drop out of school completely. Without the fulfillment of the right to water, large numbers of children around the world are, and will continue to be, unable to attend school or unable to succeed in school because they lack access to

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<sup>44</sup> For a rich discussion on women, water, sanitation and violence see Morgan Pommells, "Water, Sanitation, and Hygiene as a Gender Based Violence Risk: How Inadequate Access to Clean and Reliable Water Increases Rates of Violence Against Women in East Africa" (master's thesis, McMaster University, 2014).

<sup>45</sup> Shue, 1996, 31.

safe water. In this way, one may be able to persuade governments who recognize the right to education to indirectly recognize the importance of access to safe water in the fulfillment of the right to education. Access to safe water is a basic right as it is necessary part of the right to subsistence and is required for us to live reasonably healthy and dignified lives. Given this fact, subsistence rights are a necessary part of our being able to exercise our other basic and non-basic rights and so access to water is also required to exercise our other rights.

#### **1.4 Institutional and Governmental Support for Human Rights**

Discussion about duties and rights is not limited to the philosophical arena and can be found in discussions about human rights and international development. Language regarding rights typically centres on inalienability and the inherent dignity of the potential rights holder. There is often an understanding that some rights (moral rights) are rooted in morality while other rights are protected by law (legal rights). It is important to examine international human rights law as the law typically identifies “individual rights-holders and their entitlements and corresponding duty-bearers and their obligations” which empowers “individuals to seek improved water and sanitation under law rather than serve as passive recipients of charitable donations.”<sup>46</sup>

Post World War II, human rights gained support as a political project that “aspire[d] to formulate and enforce international norms that [would] prevent governments from doing horrible things to their people and thereby promote international peace and security.”<sup>47</sup> The Universal Declaration of Human Rights (UDHR) was not a treaty; rather it was a set of proposed standards that recommended the promotion of human rights through teaching and education and national and international measures aimed at securing universal and effective recognition and observance

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<sup>46</sup>Benjamin Mason Meier et al. “Translating the Human Right to Water and Sanitation into Public Policy Reform,” *Science and Engineering Ethics* 20, no. 4 (2014): 835.

<sup>47</sup> Nickel, 2007, 7.



of certain rights.<sup>48</sup> The UDHR begins with the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family [as] the foundation of freedom, justice and peace in the world.”<sup>49</sup> In doing so, the UDHR recognizes the existence of a moral justification as the basis for, at least, human rights. Article 1 of the UDHR specifically proclaims, “all human beings are born free and equal in dignity and rights” and Article 3 states “everyone has the right to life, liberty and security of person.”<sup>50</sup> Perhaps unsurprisingly, these are the three basic rights that Shue outlines. In reading the UDHR, one can safely conclude the UN member states believed there were certain inalienable rights that people had because they were human. Whether or not a country adopts legislation, in this case the UDHR, that ratifies an object as a right does not take away from the fact that there is a moral claim to that object. That a right is inalienable means the right’s holder cannot ever lose that right, through something they or someone else does. These rights existed before they were codified and will continue to exist if governments fail to recognize them or withdraw their legal recognition of them because they are based on moral claims.<sup>51</sup> Thus, whether or not a nation ratifies safe drinking water as a legal right does not change the fact that it is a moral right.

In addition to identifying the morality of certain rights, the UDHR provides a legal protection for certain rights though this legal protection is not always guaranteed. When a country ratifies a UN human rights treaty, the government agrees “to respect and implement the rights the treaty covers.”<sup>52</sup> States that ratify UN treaties are “required to prepare and present periodic reports on their compliance with the treaty” and the Human Rights Committee critically reflects on these

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<sup>48</sup> UN General Assembly, *Universal Declaration of Human Rights*, 1948.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Pogge, 2011, 7-8.

<sup>52</sup> Nickel, 2007,15.

reports. The periodic reports are useful for determining a country's compliance but there is little that can be done when countries fail to report their progress or fail to comply with a treaty. The system of UN human rights treaties is limited in its ability to implement human rights since the Human Rights Committee has little power to change a nation's practices. The Human Rights Committee relies only on the power of persuasion, mediation, and exposure of violations to get states to comply with human rights treaties they have signed on to.<sup>53</sup> Due to the high cost and danger, enforcement efforts are reasonably restricted to cases with severe human rights violations to ensure the worst violations are able to be addressed efficiently.<sup>54</sup>

The UDHR is not the only document supporting the moral basis of certain rights. The US Declaration of Independence states, "that they [people] are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness."<sup>55</sup> The Declaration of the Rights of Man states the National Assembly has determined "to set forth in a solemn declaration the natural, unalienable, and sacred rights of man."<sup>56</sup> The European Convention on Human Rights Protocol 13 claims the member states of the Council of Europe are "convinced that everyone's right to life is a basic value in a democratic society."<sup>57</sup> Countless other documents refer to inalienability and inherent dignity through affirming their pledge to support documents that state these principles. While many people may fail to see the importance of moral rights or may even refuse to believe they exist, the fact that countless human rights documents describe certain rights as inalienable promotes and reinforces the notion of morality since some rights exist even if governments, or individuals, fail to acknowledge them.

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<sup>53</sup> Ibid., 15-16.

<sup>54</sup> Ibid., 101.

<sup>55</sup> Declaration of Independence, US, 1776.

<sup>56</sup> Declaration of the Rights of Man, France, 1789.

<sup>57</sup> European Convention on Human Rights, 2010, 52.

In addition to the institutional and governmental support for rights, there is also widespread acceptance of the human right to water by the international community. Nickel argues, “the emergence of human rights [is] the coming together of the recognition of a problem; the belief that the problem is very severe; and optimism about the possibility of addressing it through social and political action at national and international levels.”<sup>58</sup> In 2010, 122 governments came together and voted in favour of the UN General Assembly’s adoption of the human right to clean water and sanitation, 41 governments abstained, and none voted against the adoption of the right.<sup>59</sup> The 122 governments in favour of the adoption clearly believed the problem of access to safe water was an important one that required action by national and international policymakers. The 41 governments who abstained from voting may also have believed the right to clean water was worthy of recognition and action, but cited a multitude of reasons for their abstention including: the resolution was premature; the text was ill-prepared; the world was not ready; the text did not describe the right to water in a way that reflected existing international law; and the text/vote undermined the Geneva process. Interestingly, Canada abstained from voting because the resolution proclaimed a right to water without establishing the scope of the right and the Canadian government felt “it was premature to declare such a right in the absence of a clear international agreement.”<sup>60</sup> Like many other international arrangements, the UN human right to water resolution is a non-binding resolution making it largely unenforceable. Nations can vote in favour of the right but little can be done if a nation does not comply with the right to water or does not enforce the right in national policy. Nevertheless,

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<sup>58</sup> Nickel, 2007, 36.

<sup>59</sup> "General Assembly Adopts Resolution Recognizing Access to Clean Water, Sanitation as Human Right, by Recorded Vote of 122 in Favour, None Against, 41 Abstentions | Meetings Coverage and Press Releases." UN News Center. July 28, 2010. Accessed April 04, 2016. <http://www.un.org/press/en/2010/ga10967.doc.htm>.

<sup>60</sup> Ibid.

national governments often model their laws and policies on those found in the international arena and so the adoption of the UN human right to water may act as a stepping-stone for governments to entrench the right in their own legal systems.

Since 2002, when General Comment no. 15 was outlined, the number of states recognizing the human right to water has doubled. These countries (approximately 41<sup>61</sup>) have either “enshrined the right to water within their national constitutions, or have framed the right explicitly or implicitly within national legislation.”<sup>62</sup> Countries that have enshrined the right to water in their constitutions or have implicitly or explicitly framed the right in national legislation (before and after General Comment no. 15) include: Algeria, Ethiopia, Kenya, Uganda, South Africa, Gambia, India, Sri Lanka, Philippines, Iran, Nicaragua, Costa Rica, Peru, Bolivia, Ecuador, Brazil, United Kingdom, Netherlands, France, and Belgium.<sup>63</sup>

In South Africa, Section 3 on Right of access to basic water supply and sanitation of the Water Services Act, Act 108 of 1997, states “(1) everyone has a right of access to basic water supply and basic sanitation” and “(2) every water services institution must take reasonable measures to realize these rights.”<sup>64</sup> In India, the Supreme Court ruled “the right to access to clean drinking water is fundamental to life and there is a duty on the state under article 21 to provide

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<sup>61</sup> Consider the fact that 122 countries voted in favour of the right to water but only 41 have protected the right within national policy.

<sup>62</sup> "The Rights to Water and Sanitation in National Law « Rights to Water and Sanitation." Rights to Water and Sanitation RSS. Accessed April 04, 2016. <http://www.righttowater.info/progress-so-far/national-legislation-on-the-right-to-water/>.

<sup>63</sup> Ibid.

<sup>64</sup> Republic of South Africa. *Water Services Act, 1997, Act No. 108*. Cape Town: Government Gazette, 1997, 12.

clean drinking water to its citizens.”<sup>65</sup> Hence, there is considerable support in the international arena of the idea of water as both a moral and legal right.

### **1.5 The Human Right to Water**

Most literature on rights has historically failed to include access to water as a right so it is worth noting that Shue believed unpolluted water was part of the right to subsistence.<sup>66</sup> Peter Gleick argues, at minimum, individuals need 50 litres of clean water per day to cover their drinking water, sanitation services, bathing, and kitchen and cooking activities.<sup>67</sup> 50 litres of water per day, then, is the water required for basic subsistence with approximately 5 litres of that allotment being used strictly for drinking water purposes.<sup>68</sup> Furthermore, access to this amount of water (50L/person/day) should be guaranteed by international organizations, national and local governments regardless of an individual’s economic, social, political status and should be a priority for local, national, and international groups.<sup>69</sup> While Gleick has vehemently argued that 50L/p/d is required for basic subsistence, his views are not universally recognized or accepted. The UN resolutions on water have remained relatively silent on what amount of water is required for basic needs leaving its position open to interpretation. Depending on what water related activities are considered necessary for basic survival leads to a variance in the amount of water

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<sup>65</sup> A.P. Pollution Control Board II v Prof. M.V. Naidu and Others (Civil Appeal Nos. 368-373 of 1999).

<sup>66</sup> Mattias Risse, “The Human Right to Water and Common Ownership of the Earth,” *The Journal of Political Philosophy* 22, no. 2 (2014): 181.

<sup>67</sup> Peter H. Gleick, "Basic Water Requirements for Human Activities: Meeting Basic Needs," *Water International* 21, no. 2 (1996): 88.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid., 83 and 88.

said to be required. If we consider only drinking water and sanitation needs to be necessary then the amount of clean water required can range from 2-80L/person/day.<sup>70</sup>

In delineating the human right to water, General Comment no. 15 states water is indispensable for leading a dignified life and is a prerequisite for the realization of other rights. This shows the international community's willingness to accept the right to water as not only a right, but also an integral part of the basic right to subsistence as Shue suggests it should be. Moreover, in outlining the right in more detail, General Comment no. 15 asserts "the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses" and the right is to an adequate amount of water that can "prevent death from dehydration" and "reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygiene requirements."<sup>71</sup> Comment 15 imposes at least three obligations on member states: obligations to respect, protect, and fulfill the right to water,<sup>72</sup> the very duties Shue outlines as critical to the fulfillment of any right. This explicit understanding of the important role water plays in the fulfillment of the right to an adequate standard of living and the right to the highest attainable standard of health led to the UN's formal recognition of the right to water in 2010.

The international recognition and endorsement of the human right to water has changed international legal institutions' implicit responsibility to provide water and sanitation to an explicit obligation precisely because the human right is "legally binding on state governments

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<sup>70</sup> Ibid., 87.

<sup>71</sup> United Nations Committee on Economic, Social and Cultural Rights. *General Comment No. 15: The Right to Water*. 2002. E/C.12/2002/11.

<sup>72</sup> Ibid.

under established human rights.”<sup>73</sup> Moreover human rights are often employed in a top-down approach or global-national-local approach. Once the human right to water was ratified in international law, policymakers, practitioners and advocates had to translate the right into rights-based outcomes through global governance, national policy, and, finally, local practice.<sup>74</sup> That being said, it is primarily the responsibility of national governments to implement the human right to water often through its being codified in national law.<sup>75</sup>

### **1.6 Conclusion**

It is impossible to survive without access to water (whether it be safe water or not). It is suggested that individuals need approximately 5 litres of safe water per day for drinking and a total of 50 litres per day for drinking water, sanitation services, bathing, and kitchen and cooking.<sup>76</sup> Gleick’s suggested requirement of 50 litres per day of water is understood as the amount of water required for basic subsistence for this thesis. The adoption of UN Resolution 15/9 recognized the importance of safe drinking water formally endorsing it as a human right. What, then, are the implications of having a human right to safe drinking water? In the following chapter, I discuss the duties arising from the right to safe drinking water and who ought to fulfill these duties.

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<sup>73</sup> Meier et al., 2014.

<sup>74</sup> Ibid., 837.

<sup>75</sup> Ibid., 840.

<sup>76</sup> Gleick, 1996, 88.

## Chapter 2

### Water Duties and the Non-Fulfillment of the Right to Water

There is disagreement in the literature about the duties arising from so-called positive rights and whether any specific person is obligated to fulfill these duties. This chapter attempts to answer some of the questions about the duties associated with the right to water and what constitutes a non-fulfillment or a violation of the right to water. I am concerned with who has a duty that correlates to the right to water and what those duties require one to do or refrain from doing. First, I establish the human right to water is unfulfilled in many places around the world. Due to the non-fulfillment of the right to water, it is important to outline the correlative duties. Bearing this in mind, I examine Shue's conception of duties as a way to lay the foundation for this chapter and the remainder of this thesis. On Shue's account there are at least three duties correlating to a right – to avoid depriving; to protect from deprivation; and to aid the deprived. Using Shue's account of duties, there are negative duties that require us to refrain from acting in certain ways and there are positive duties that require us to act in ways that protect rights and provide certain rights' objects to those lacking them. Finally, remedial duties arise when the duties to avoid depriving and to protect from deprivation have been violated. Consequently, I explore rights violations and the remedial duties accompanying these violations, especially as they pertain to the right to water. Ultimately, I conclude the global north has (i) duties to respect, protect and fulfill the right to water to those without meaningful access to water, specifically safe drinking water for persons in the global south; and (ii) violated the right to water of those in the global south and so has incurred remedial duties regarding the right to water.<sup>77</sup>

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<sup>77</sup> The global north has also violated other rights, not just the right to water.



## **2.1 The Non-Fulfillment of the Human Right to Water**

Safe water is a human right and so there is a series of positive and negative duties to ensure the fulfillment of the right – that everyone has access to the water required for subsistence including access to safe drinking water. Given the current state of affairs, the human right to water remains unfulfilled for many people though there are attempts to remedy this non-fulfillment. As of 2015, an estimated 663 million people worldwide are not using an improved drinking water source<sup>78</sup> and are therefore assumed to be using unsafe water. The underreporting of people using unsafe water arises from the conflation of using “improved water source” as representative of “safe water” and using “unimproved water sources” as representative of “unsafe water”.<sup>79</sup> Onda et al. report an estimated 3 billion people worldwide do not have access to sufficient quantities of safe water.<sup>80</sup> With approximately 3 billion people using unsafe water it is clear the human right to water remains largely unfulfilled since it does not appear to be socially guaranteed in any meaningful sense. The non-fulfillment of this right bears special importance when we consider the importance of duties to the right to water. Importantly, because the right to water is unfulfilled, whom can we rightly regard as duty bearers? What, if any, duties do individuals and institutions have in the fulfillment of the human right to water? On what basis can we claim that specific others (individuals, groups, institutions) are obligated to ensure the fulfillment of the human right to water?

## **2.2 Shue’s Duties**

A central component of a right is the ability to make a justified demand to others thereby creating the relevant duties. Rights are often broken down into positive rights and negative rights

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<sup>78</sup> United Nations, *The Millennium Development Goals Report 2015*, 58.

<sup>79</sup> Onda et al., 2012, 881.

<sup>80</sup> Onda et al., 2012.

where the former requires people to actually do something (act) and the latter requires people to abstain from actions that violate rights (omission).<sup>81</sup> Arguably, the duties arising from positive or negative rights are, respectively, duties to act or duties to refrain from acting in a certain manner. Negative duties, thought to be associated strictly with negative rights, require us to refrain from acting in ways that would otherwise violate rights. For example, the right to life requires that I am prohibited from acting in ways that violate your right, namely from killing you. Positive duties, typically associated with positive rights, on the other hand, require individuals to act in ways that ensure the fulfillment of a right. For example, the right to life construed in a positive manner obligates us to provide goods to others (often provided through public revenue) including healthcare. Rights fulfillment typically involves more than one kind of correlative duty, as I will argue, and it is problematic to think rights and duties come in strict one-to-one pairs or that all seemingly negative rights entail only negative duties.<sup>82</sup> As we can see from the right to life there are both positive and negative duties correlating to that right.

The focus on positive and negative rights leads to increased attention on the differing aspects of duties. On the standard view, negative duties are thought to be perfect and “stringent duties of justice that correspond to human rights” while positive duties are thought to be imperfect duties “that do not correspond to rights” or are “special duties that can only correspond to special rights rather than human rights.”<sup>83</sup> Perfect duties have clearly defined content and “are owed by specific agents to specific recipients” whereas the same cannot be said about imperfect duties which “allow a particular agent latitude over the content of the duty, and, generally, also

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<sup>81</sup> Shue, 1996, 36.

<sup>82</sup> Shue, 1996, 39.

<sup>83</sup> Elizabeth Ashford, “The Alleged Dichotomy Between Positive and Negative Rights and Duties,” in *Global Basic Rights*, edited by Charles R. Beitz and Robert E. Goodin, 92-93. Oxford: Oxford University Press, 2009.

over the duty's recipient."<sup>84</sup> Thus, on the standard account, the correlative duty for the right to physical security would be negative in the sense that others have the duty not to violate your right to physical security. Conversely, subsistence rights or welfare rights, when recognized as such, are often understood as being positive rights with positive duties. According to this dichotomy, positive duties are thought to be more onerous than their negative counterparts<sup>85</sup> and so the right to water, a so-called positive right, is thought to typically involve more affirmative actions including the provision of water. This distinction has long been thought to be the best way of conceiving of rights and duties.

There are, however, many problems with conceiving of rights and duties in strictly positive and negative terms. It appears that distinguishing between positive and negative rights is not as easy as was once presumed.<sup>86</sup> Splitting rights into strictly positive or negative categories can be complicated and results in a false dichotomy between action and omission. To illustrate this point consider the example above. The fulfillment of the right to physical security, typically understood as a negative right, involves more than just the avoidance of violating that particular right. The right to physical security involves the positive duties to, for example, set up and train a police force, implement systems to prevent violations from occurring, and to create criminal courts and penitentiaries to name a few. Thus, there are not only negative duties that correlate with the right to security but also positive duties.

Many argue that the right to water is fulfilled through positive duties by, namely, individuals and institutions providing access to safe water. While this is certainly true, there are

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<sup>84</sup> Ibid., 100.

<sup>85</sup> Shue, 1996, 40.

<sup>86</sup> Though many do continue to argue on the basis of a positive-negative rights dichotomy. See Onora O'Neill 1986, 1988, 2000

also negative duties accompanying this right. Importantly, to fulfill the right to water one has negative duties to refrain from polluting water systems and manipulating governments who control water resources. Most significantly, there are duties not to exploit the natural resources of a country and not to deprive individuals of their right to water. Hence, the right to water clearly involves both acts and omissions in order to be fulfilled. The dichotomy of rights/duties approach, however, works to reinforce certain notions about rights, especially the assumption that positive rights are more onerous than their negative counterparts. Rights fulfillment involves more than one kind of correlative duty and it is problematic to think that rights and duties come in strict one-to-one pairs or that all seemingly negative rights entail only negative duties.<sup>87</sup>

Rather than break rights down into the positive/negative dichotomy, Shue argues there are three correlative duties for every basic right (rights essential for the enjoyment of all other rights and the rights which can be demanded if no others can be). These duties are: (1) duties to avoid depriving; (2) duties to protect from deprivation; and (3) duties to aid the deprived.<sup>88</sup> It is not expected nor is it even required that particular individuals must act on all three of these duties. These three duties do not all fall on only individuals nor do they fall equally upon everyone.<sup>89</sup> Rather, there is a time and place for individuals to act on their duties just as governments and institutions must act on theirs.

Shue provides a specific list of duties, at minimum, regarding the right to subsistence. The duties are as follows:<sup>90</sup>

- (I) To avoid depriving (respect)
- (II) To protect from deprivation (protect)

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<sup>87</sup> Shue, 1996, 39.

<sup>88</sup> Ibid., 52.

<sup>89</sup> Ibid, 53.

<sup>90</sup> Ibid., 60.

- a. By enforcing duty (I); and
  - b. By designing institutions that avoid the creation of strong incentives to violate duty (I)
- (III) To aid the deprived (fulfill)
- a. Who are one's special responsibility;
  - b. Who are victims of social failures in the performance of duties (I), (IIa), and (IIb); and
  - c. Who are victims of natural disaster.

Shue's characterization of duties is much fuller than the positive-negative dichotomy.

The duty to avoid depriving others of their rights obligates individuals and institutions to respect basic rights. The duty to protect from deprivation acts in a twofold manner. First, individuals and institutions must act in ways that enforce the duty to respect rights. Second, individuals and institutions must create, if they do not already exist, and maintain institutions that do not deprive others of the substance of their rights. Finally, the duty to fulfill obligates individuals and institutions to ensure the fulfillment of the rights of those who are our special responsibility and those who are victims of the violations of the above duties. We are also obligated to fulfill the rights of those who lack the substance of their rights for various reasons (that do not entail a violation), including those lacking subsistence rights because of natural disasters. Shue's theory offers a comprehensive view of the kinds of duties we have with regard to subsistence rights and so lays the groundwork for this thesis and questions arising about our duties with respect to the right to water. Subsequent sections will build on this work and claim that both individuals and institutions have duties regarding the right to water and both engage in violations of the right to water.

### **2.3 Rights Violations**

There is no consensus on what constitutes the violation of a basic right. Some authors argue that a violation occurs only when the negative aspect (duty not to deprive) is not respected

while others argue that violations occur when the positive aspects (duties to protect and aid) are not respected. Pogge argues a violation involves the non-fulfillment of human rights and a “specific causal relation of human agents to such non-fulfillment.”<sup>91</sup> Thus a violation is anything that results in the non-fulfillment of a basic right that is causally connected to other human agents not fulfilling the right through deprivation. A violation occurs when we deprive others of their subsistence rights, and therefore deprive them of their right to water. Importantly, not every instance of a right being unfulfilled necessarily counts as a rights violation. A right is unfulfilled when the person “lacks secure access to the object of that human right.”<sup>92</sup> Pogge argues the “unfulfilled human right manifests a human rights violation only if there are one or more human agents who are bringing about the un-fulfillment of the human right in question while they could and should have known that their conduct would have this result.”<sup>93</sup> In order for the non-fulfillment of a right to entail a violation it must be strictly correlated with the failure to avoid depriving access to the substance of a human right. On this view, the non-fulfillment of the right to water counts as a violation of the duty only when we deprive others of their access to water. However, I will argue in due course that the non-fulfillment of the right to water counts as a violation when individuals are deprived of the substance of their right, when individuals are not protected from deprivation of their right, and when individuals suffering from rights deprivation are not aided.

The human right to water largely remains unfulfilled by virtue of the fact that tremendous numbers of people lack access to safe drinking water or lack adequate quantities of safe water (approximately 3 billion). In some locations and amongst some populations the nonfulfillment of

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<sup>91</sup> Pogge, 2011, 1

<sup>92</sup> Ibid, 3.

<sup>93</sup> Ibid., 9.

the right to water is more visible. There are huge disparities regarding access to safe water across regions and nations, and these disparities are also found within nations (between rich and poor, and rural and urban communities). According to the JMP, approximately 96% of the world's urban population used an improved water source in 2010 and only 81% of rural population used an improved water source. Approximately 29% of the world's rural population had piped water connections in comparison to 80% of the world's urban population.<sup>94</sup> Global and national averages often mask the disparities for safe water between urban and rural populations. If we examine only the world's least developed countries (48) then only 11% of the population uses piped water on premises in comparison to the global average of 54%. The people in the 48 least developed countries have received little to no benefit from investment in water and sanitation as an estimated 1 in 10 continue to use surface water for drinking and household purposes.<sup>95</sup> We live in a world where people lack access to safe drinking water and so it is undeniable that certain individuals, institutions, and governments have duties to ensure access to water for those who require it. The question is what duties are we, members of the global order, obligated to fulfill as a result of the non-fulfillment of the right to water.

Under Shue's interpretation of duties (to respect, to protect, and to fulfill)<sup>96</sup> the clearest violation of a right involves breaches of the duty to avoid depriving (i.e. to respect the right). Individuals and institutions should not act in ways that result in others being deprived of their right to safe drinking water. If our current institutions act in ways that do not respect the right to safe drinking water, then we are obligated to change our institutions so they no longer violate

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<sup>94</sup> United Nations International Children Fund and World Health Organization, *Progress on Drinking Water and Sanitation 2012 Update*. UNICEF and WHO, 2012, 12.

<sup>95</sup> *Ibid.*, 28.

<sup>96</sup> General Comment 15 also explicitly recognizes the obligations for the right to water as being to respect, to protect, and to fulfill

rights. Pogge claims that duties to protect and provide human rights are more positive in nature and so are “largely irrelevant to the topic of human rights violations.”<sup>97</sup> Hence, for Pogge, it is only possible to violate a human right by breaching the duties to respect or duties not to collaborate.<sup>98</sup>

Rights violations, however, are not limited to only those actions that cause deprivation, in the way Pogge suggests. Rights violations also occur when there is a failure to fulfill the duty to protect from deprivation and the duty to aid the deprived. General Comment no. 15 clearly recognizes that:

violations of the right to water can occur through *acts of commission*, the direct actions of States parties or other entities insufficiently regulated by States... [and] through *acts of omission* [including] the failure to take appropriate steps towards the full realization of everyone’s right to water, the failure to have a national policy on water, and the failure to enforce relevant laws.<sup>99</sup>

A violation of the right to water can thus be said to occur when (i) individuals are deprived of safe water; (ii) individuals are not protected from water deprivation; and (iii) individuals are not aided when they are deprived of access to safe drinking water.

#### **2.4 Whose Duties and How Ought They To Be Fulfilled?**

If we accept that there are duties to the right to water, and they take the form Shue suggests, then we must discern who is obligated to fulfill these duties. This section is divided into several parts to provide a thorough discussion of the obligations associated with the right to water. First, I consider some of the major arguments regarding who has what duties to fulfill the right. I consider whether we can make rights claims to our compatriots, all individuals, or global

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<sup>97</sup> Pogge, 2011, 11.

<sup>98</sup> Ibid., 17.

<sup>99</sup> United Nations Committee on Economic, Social and Cultural Rights. *General Comment No. 15: The Right to Water*. 2002. E/C.12/2002/11.



institutions. Once established that our duties are not limited to only compatriots, I conclude a hybrid approach to duties is necessary and that individuals and institutions are both obligated to ensure the fulfillment of the right to water.

#### **2.4.1 Domestic vs. Global Duties**

There is considerable debate about whether and to what extent we have duties to our compatriots and so-called distant strangers. Once it has been established that we have rights and are obligated to perform the correlative duties (to respect, protect, and fulfill) questions arise about to whom we owe these duties. Are we obligated to perform duties only to our compatriots? Are we duty-bound to strangers around the world? Should we prioritize duties to our compatriots over non-compatriots? What duties do wealthy people in countries in global south have to the poorer populations within their respective nations given the disparities within their particular nations?

Peter Singer famously argues that people are obligated to prevent something bad from happening if it is within their power to do so and, in doing so, they do not have to sacrifice anything of comparable moral significance. Singer provides the well-known drowning child scenario in support of his position. In the case of the drowning child, Singer argues that proximity does not matter when it comes to whose duty it is to save the child.<sup>100</sup> Since its publication, the drowning child scenario has been widely disputed and numerous alterations of the scenario have been drawn upon for further philosophical inquiry. While one may not agree with the use of Singer's analogy, it nevertheless provides a powerful argument demonstrating the

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<sup>100</sup> Peter Singer, "Famine, Affluence, and Morality," *Philosophy of Public Affairs* 1, no. 3 (1972): 229-243.

duties we may have to those who are not in close proximity to us and who are not our compatriots.

Nonetheless, many authors argue that we have duties to our compatriots and/or that our duties to our compatriots should be prioritized over possible duties to non-compatriots. On what basis can we argue for the prioritization of duties to compatriots?<sup>101</sup> If we consider the example of Canada, people living in the country have agreed to certain rights (through the Canadian Charter of Rights and Freedoms, as well as treaties Canada has endorsed) and pay taxes to the same government. As Canadians, it can be said that we, like those in other nations, have entered into a contract as citizens that obligates us to act on duties to other Canadians. There are, however, problems associated with claiming we are obligated to prioritize duties to compatriots over others or that we only have duties to our compatriots.

The first problem arises from questions about what exactly binds Canadians, or other nationalities for that matter, together in a way that creates an obligation to fulfill duties to other Canadians. What is the basis for the claim that Canadians are duty-bound to one another? One reason for our being duty-bound could stem from the shared identities we have and other commonalities. As Canadians we share institutional arrangements (government etc.) and a common set of rights that have been ratified through the Canadian Charter of Rights and Freedoms. We could claim that we are duty-bound to Canadians because we are a part of the same community. However, problems are associated with determining what constitutes a meaningful commonality or community – the fact that we share language and culture, laws,

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<sup>101</sup> Thomas Nagel argues that citizens “have a duty of justice toward one another through the legal, social, and economic institutions that sovereign power makes possible... justice is something we owe through our shared institutions only to those with whom we stand in strong political relation.” See, Nagel, 2005.

religion, or ethnic origins.<sup>102</sup> For example, an Irish-Canadian and an Ugandan-Canadian may not share any significant similarities beyond the fact that they both are Canadian citizens. Perhaps then, while we have duties to our compatriots we can argue that we have stronger duties to those that share the most commonalities with us, rendering them special duties.<sup>103</sup>

The second problem with arguing in favour of duties to only compatriots or for the prioritization of duties to compatriots stems from questions about who we can rightly say is a compatriot. If we cannot adequately determine what binds certain groups together to create duties then we will have difficulty in claiming duties to our fellow group mates or compatriots. For David Miller, compatriots are individuals who share an understanding about “what it is they are members of, and what distinguishes them from outsiders” and knowing this information is “sufficient to bind them together into a relationship that has genuine value.”<sup>104</sup> This definition leaves room for interpretation since knowing what group a person belongs to can be difficult since people are often members of many groups or perceive themselves to be distinct from other groups. For example, I can be a Canadian citizen and pay taxes to the government but refuse to see myself as part of the Canadian group and instead see myself as belonging to some other group. If this is the case, are Canadians duty-bound to me and do I have duties to other Canadians? Individuals who see themselves as belonging to more than one group (Canadian and Irish) may find themselves duty-bound to a considerable number of people. If we can have duties

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<sup>102</sup> See David Miller, 2005; Brock, 2008b; and Moellendorf, 2011 for discussions about cosmopolitanism and duties to compatriots.

<sup>103</sup> David Miller argues for both global and local duties. He lists several conditions necessary for assigning special duties including that the relationships are intrinsically valuable, the relationships must not be premised on unjustness, and where duties can be shown to be an integral part of the group’s relationships. See Miller, 2005.

<sup>104</sup> Miller, 2005, 68.

to more than one group that we are a part of then why should we be hesitant to say we have duties to all people because we are part of one group: the human race?

Interpreting compatriots based on citizenship alone can also create problems for a theory of prioritizing local duties over global duties. Can compatriots be said to be all those who hold, for example, Canadian citizenship? Surely not since there are people living in Canada who pay taxes to the Canadian government who are not Canadian citizens. Does this mean we have no obligation to ensure their rights are fulfilled or that we should prioritize citizen's rights over their rights? Conversely, there are Canadians who have lived overseas for decades and yet remain Canadian citizens. In such cases, are we morally obligated to ensure their rights are being fulfilled even though they are essentially distant strangers living under the rules of a different government?

All of this to say that it is difficult to claim that we have only duties to those who are our compatriots or that we can prioritize duties to compatriots, as we shall see, when it comes to the fulfillment of basic rights. It is difficult to prioritize duties to our compatriots unless we understand the term "compatriot" in a very broad sense and in doing so affirm the notion that we are all compatriots because we are members of the human race and live under the same global order. As Pogge succinctly argues, there is no good reason to claim the distinction between the social institutions of one's country and the social institutions of all other countries is enough to assert that we do not have duties to those in other countries.<sup>105</sup>

In opposition to arguments about local duties, the cosmopolitan approach to global justice argues, "that every person has global stature as the ultimate unit of moral concern and is therefore entitled to equal respect and consideration regardless of what her citizenship status, or

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<sup>105</sup> Pogge, 2011, 15.

other affiliations happen to be.”<sup>106</sup> Gillian Brock, a proponent of cosmopolitanism, contends that we are equally responsible in protecting the ability to subsist for both our compatriots and non-compatriots. We have equal responsibilities to provide food for those who find themselves unable to provide for their basic needs.<sup>107</sup> It is only once appropriate institutions are in place which aim to ensure *everyone*’s interests are adequately protected that we may “with a clear conscience, prioritise meeting the needs of our compatriots.”<sup>108</sup> According to Brock, we have a responsibility, and I would argue an obligation, to ensure the proper social and political arrangements are in place to support the things necessary for a decent life, and our governments can sometimes discharge this duty for us. We cannot with clear conscience continue to prioritize the non-basic needs of our compatriots over the basic needs, for example access to safe water, of our non-compatriots. It is only once the appropriate institutions have been established that we may even begin to prioritize the needs of our compatriots.<sup>109</sup>

None of this is to say that we are not duty-bound to our compatriots. Citizens of the same country ought to fulfill their duties to those living within their nation’s borders. Wealthy individuals living in countries in the global south have duties to rectify the vast disparities in wealth within their nations and are morally obligated (i) avoid depriving; (ii) protect from deprivation; and (iii) aid those who are deprived in both their own countries and, where necessary, abroad. In the case of rights violations, individuals should first seek help from their own governments since it is often the case that helping those close to home is more effective and sustainable than helping those abroad. If a government is unable or unwilling to remedy the rights violation then people have the ability to claim their rights be fulfilled by non-compatriots

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<sup>106</sup> Brock 2008b, 433.

<sup>107</sup> Ibid., 444.

<sup>108</sup> Ibid., 445.

<sup>109</sup> Ibid. 445-446.

(individuals, governments, and institutions), especially if their basic rights are being violated.<sup>110</sup>

It is also the duty of Canadians, among others, to ensure our social institutions are not violating the rights of those in other countries. If our social institutions do violate rights then it is our duty to change the arrangement of our social institutions so that they no longer violate rights.

### **2.4.2 Approaches to Duties**

There are two common ways of interpreting the assignment of duties. First, one can take an institutional approach whereby institutions are responsible for rights fulfillment. On this account, *institutions* should not deprive individuals of their rights and institutions violate rights when they do not respect the rights of individuals. When this occurs institutions acquire remedial duties, to correct the violation they created.<sup>111</sup> Under this account, Pogge argues the current supranational institutional regime “foreseeably and avoidably produces massive human rights deficits” and so we can rightly say we, the global order, are currently violating the rights of the global poor.<sup>112</sup> Pogge gives us good reason to think an institutional approach is enough to fulfill our obligations to others and many argue this approach is best as it requires only that institutions have a negative duty to not harm others.<sup>113</sup> This statement is quite palatable for many and it is clear Pogge is attempting to garner the most support for his position in formulating his claims.

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<sup>110</sup> See Devlaeminck, 2013.

<sup>111</sup> Thomas Pogge, “Severe Poverty as a Human Rights Violation,” in *Freedom from Poverty as a Human Right: Who owes what to the very poor?* Edited by Thomas Pogge, 11-53. Toronto: Oxford University Press and UNESCO, 2007.

<sup>112</sup> Pogge, 2011, 1.

<sup>113</sup> Pogge, 2011, 29-30.

An institutional account, however, is not free from problems.<sup>114</sup> One problem arising from an institutional approach is that of the role of individuals in rights violations. According to an institutional account, individuals cannot directly violate the rights of others. It is only through their participation in institutions that they can be said to violate rights. Pogge argues citizens can and should compensate others for a share of the harm their country is responsible for causing. Citizen compensation is accomplished through citizens “supporting effective international agencies or nongovernmental organizations” and by fulfilling the negative duty “not to collaborate in the design or imposition of social institutions that foreseeably cause a human rights deficit that is reasonably avoidable through better institutions.”<sup>115</sup>

Nevertheless, it would be wrong to assume individuals and governments or institutions are distinct entities through which each fulfills its own distinct duties. Judith Lichtenberg argues there are at least two reasons why we should not hold this distinction (individuals vs. governments/institutions) to be true. First, individuals constitute institutions and so the duties of institutions ultimately fall onto individuals.<sup>116</sup> Second, and perhaps more concerning, if we maintain the distinction between governments and individuals, then human rights are solely the duty of governments and institutions rendering it virtually impossible to criticize individuals for

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<sup>114</sup> Challenges against an institutional account include whether there is in fact a global order that causes violations and what the baseline we are working from is. How can we know whether people are worse off under the current regime than they would be in some other regime? With respect to what baseline can we claim that individuals are worse off? See Campbell, 2007; Tasioulas, 2007; Ashford, 2007; Wenar, 2007.

<sup>115</sup> Ibid., 32.

<sup>116</sup> Judith Lichtenberg, “Are There Any Basic Right,” in *Global Basic Rights*, edited by Charles R. Beitz and Robert E. Goodin. Oxford: Oxford University Press, 2009, 77.

committing human rights violations.<sup>117</sup> And yet many of us think individuals can and do violate rights.

Tom Campbell highlights several other problems with Pogge's institutional approach and claims Pogge's position fails because he cannot account for harms caused by things other than injustices.<sup>118</sup> What is important for Pogge is that our institutions do not cause harm to others. Pogge is only concerned with Shue's duty to avoid depriving thereby neglecting Shue's other two duties: the duty to protect from deprivation and the duty to aid the deprived. Do we not have a duty to aid those who lack safe drinking water, even when our institutional regime has not caused the situation to occur? Moreover, are there not problems associated with limiting the responsibility of rights fulfillment strictly to institutions and governments? We should be hesitant to accept Pogge's institutional account because we are obligated to fulfill our duties even if our institutions are not causally responsible for the harms.

The second approach to the assignment of duties is an interactional approach that argues *individuals* violate the rights of others when they "act in such a way that they foreseeably and avoidably deprive others of their livelihood."<sup>119</sup> On an interactional approach, when I deprive you of your ability to access safe water I am violating your right. A purely interactional account can be problematic as well since rights violations are typically complex and involve numerous causal parties, both direct and indirect. A person's inability to secure their right to water is not typically the result of one individual preventing the other from obtaining meaningful access to safe water. Rather, there are many causal factors at play rendering it more difficult to assign

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<sup>117</sup> Ibid.

<sup>118</sup> Tom Campbell, "Poverty as a Violation of Human Rights: Inhumanity or Injustice?" in *Freedom from Poverty as a Human Right: Who owes what to the very poor?* Edited by Thomas Pogge, 55-74. Toronto: Oxford University Press and UNESCO, 2007.

<sup>119</sup> Pogge, 2007, 16.



responsibility and making it more difficult for causal actors to foresee the effects of their actions.<sup>120</sup> What particular action of mine made it the case that a particular person in Uganda cannot secure their right to safe drinking water? In the current globalized world, it can be tough, if not impossible, to answer this question.

### **2.4.3 Hybrid Approach**

While neither the institutional account nor the interactional account adequately explains our duties to others, it is a combination of the two accounts that proves to be the most promising when discussing our obligations to others.

It is clear that one of the major reasons for the tremendous rights violations is causal failures by institutions and institutional practices. Pogge argues there are at least six ways we can claim institutions violate the rights of those living in the global south.<sup>121</sup> First, the global north buys natural resources from the leaders of countries in the global south without any regard for how these leaders came into power or how these leaders exercise their power (international resource privilege). Problematically, an oppressive ruler can sell off the nation's natural resources (oil, minerals, water) and subsequently use the money to buy weapons to keep themselves in power and continue their oppressive regime. Second, the global north and international banks, especially the World Bank and International Monetary Fund, lend money to rulers and force nations to repay the ruler's debt (international borrowing privilege) without caring about how a ruler came to power or exercises their power. Dictators borrow money for their personal use and once removed from power are no longer responsible for repayment; rather, the new government takes on the previous ruler's debt. Third, the global north allows and

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<sup>120</sup> Ibid.

<sup>121</sup> Pogge, 2011, 29-30; Pogge, 2001; Pogge 2002.

facilitates the embezzlement of funds by public officials and western banks accept and manage these funds. Global Financial Integrity estimates developing and emerging economies lost approximately US \$6.6 trillion between 2003-2012 in embezzled funds.<sup>122</sup> Fourth, the global north participates in tax evasion in the global south depriving these countries of tax revenues. The 2016 release of the Panama Papers<sup>123</sup> highlights the pervasive problem of offshore tax regimes. Countries including Nigeria and Malawi are impacted by this tax evasion since “tax avoiders often route money through countries that they know have unfair tax treaties – which also tend to be the poorest” and the governments “are left with little right to tax this money.” In addition, approximately 30% of all African financial wealth is “held offshore in tax havens, costing an estimated \$14 billion in lost tax revenues every year.”<sup>124</sup> Ultimately, tax corruption and tax evasion leads to a decrease in taxable revenue meaning countries have less public revenue to rely on for water infrastructure and public water utilities. Fifth, the global north is responsible for a huge portion of the global pollution and yet it is those in the global south who suffer from the effects of pollution. Sixth, the global north “created a global trading regime that is supposed to release large collective gains through free and open markets” but the regime is rigged so the global north receives the gains.<sup>125</sup>

Other authors also give us good reason to claim the global north violates the rights of those in the global south. Richard Miller argues the global north has a duty to aid the global

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<sup>122</sup> In 2012 alone US \$991.2 billion flowed illicitly out of these economies. These funds often come from crime, corruption, tax evasion, and other illegal activities. See Dev Kar and Joseph Spanjers, 2014.

<sup>123</sup> 11.5 million secret documents connected to the Panama-based law firm Mossack Fonseca.

<sup>124</sup> Lucy Clarke-Billings, "Panama Papers: Who Are The Real Victims Of Tax Avoidance and Evasion?" Newsweek. April 5, 2016. Accessed April 07, 2016. <http://www.newsweek.com/panama-papers-who-are-real-victims-tax-avoidance-and-evasion-444144>.

<sup>125</sup> Pogge, 2011, 30.

south as a result of their relationship with one another.<sup>126</sup> Governments, corporations, and individuals take advantage of those in the global south and in doing so violate their rights. Miller shows this to be true in three ways (i) the way our current transnational production and exchange occurs; (ii) the kinds of inequitable relationships we hold by way of upholding global inequity through commerce; and (iii) the imperialistic tendencies of the global north that allow them to shape international agreements.<sup>127</sup>

Our current transnational production and exchange is exploitative. Exploitation occurs when one party, with higher bargaining power, extracts a benefit from another party as a result of that party's inferior bargaining power. When exploitation occurs, the superior party shows a disregard for the inferior party's worth and their capacity for choice.<sup>128</sup> While some, especially corporations, claim the existence of Nike in India creates ample job opportunities and so does not violate rights, it is not altogether clear whether the worker gains a benefit depending on the baseline one is working with. The worker may be better off given their unjust and impoverished starting point but the worker may not be better off if we consider how the worker would be doing in a better global order, namely one without (or with much less) injustice. Miller argues it is far from obvious that the exploited worker gains a benefit from being taken advantage of and, even if such a benefit did exist, it does not negate the viciousness of exploiting another human being.<sup>129</sup> Regardless of whether a benefit is conferred to the worker, the exploitation of the

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<sup>126</sup> Whereas Pogge claims we have a duty not to deprive others of their rights and if we do deprive them then we have remedial duties to correct the harm we created.

<sup>127</sup> Richard W. Miller, "Global Power and Economic Justice." In *Global Basic Rights*, edited by Beitz and Goodin, 156-180. Oxford: Oxford University Press, 2009.

<sup>128</sup> Ibid., 161

<sup>129</sup> Ibid., 161-162.

worker's circumstances is morally corrupt and should not be tolerated. Hence for Miller, the global north has a duty to not take advantage of business partners in the global south.<sup>130</sup>

Furthermore, the global north uses its superior bargaining power to manipulate and bully the global south into the actions it desires. Countries in the global south desperately desire access to the economic markets of the global north and are at the mercy of the global north when it comes to market accessibility. As a result, poorer countries are forced to take a loss to join the global north's markets instead of waiting for a more opportune time for their joining.<sup>131</sup> Rather than manipulate negotiations, the global north should engage in fair and reasonable deliberations with one another and countries in the global south. We should observe reciprocity in our reasoning and justify proposals on the basis of relevant considerations rather than on the basis of who is asking for the justification. Our governments should not participate in activities that are beneficial to our citizenship at the cost of burdening the global south.<sup>132</sup>

The final argument Miller makes for the obligations of the global north is based in imperialism. A country acts imperialistically when (i) the nation's actions have a significant global impact; (ii) the nation is able to influence other countries through the power of threats; and (iii) the nation's threats are credible.<sup>133</sup> For these reasons, we can say the global north has obligations to fulfill its remedial duties to the global south because it has engaged in rights violations. The global north, according to Miller, has a duty to provide for the basic needs of those whose rights have been violated as a result of the global north's actions.<sup>134</sup>

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<sup>130</sup> We also have the duty not to exploit the resources of other countries. See Gabriel Eweje, 2006 and Chris O. Ikorukpo, 2004.

<sup>131</sup> Miller, 2009, 164-166.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid., 168-169.

<sup>134</sup> Ibid., 174.

Elizabeth Ashford argues that in addition to the negative duties the human right to basic needs imposes, there are positive duties and the majority of the responsibility for “implementing both kinds of duties lies largely with citizens in affluent countries.”<sup>135</sup> If rights violations could only occur at the hands of institutions then individual actors could never commit a rights violation. As a result of the difficulty in ascertaining who is a rights violator under our current rights discourse, Ashford proposes we shift our thinking around human rights violations and broaden the conception of a perpetrator. In this way indirect and direct actors cause human rights violations but have varying degrees of moral responsibility and are less morally blameworthy when they do not directly violate rights.<sup>136</sup>

Direct responsibility for human rights violations comes in two forms: additive and multiplicative. An additive rights violation occurs when an agent performs an act that in itself does not harm any particular person, but when many agents perform the act together it results in serious harms to many victims.<sup>137</sup> In these cases, we cannot directly identify a single perpetrator who is responsible for a particular victim’s harm. Even when a group of agents acts independently of one another it can still be said that together they are violating the rights of others if “the agents either know about those harms or are culpably ignorant of them.”<sup>138</sup>

The second way one can be directly responsible for a rights violation is through multiplicative harms. Multiplicative harms result from contributing causal factors that

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<sup>135</sup> Elizabeth Ashford, “The Duties Imposed by the Human Right to Basic Necessities,” in *Freedom from Poverty as a Human Right: Who owes what to the very poor?* Edited by Thomas Pogge, 183-218. Toronto: Oxford University Press and UNESCO, 2007.

<sup>136</sup> *Ibid.*, 191-193.

<sup>137</sup> *Ibid.*, 195.

<sup>138</sup> *Ibid.*, 197.

“magnify the harm caused by another agent or agents.”<sup>139</sup> If two factories pollute a shared river with chemicals that together poison the water (but alone are not harmful) then they can both be said to violate the rights of the people who use the water system. We cannot say which factory contributed to the harms of which people; rather, we can say that the victim(s) have a claim against both factory owners.<sup>140</sup> Hence, according to both additive and multiplicative harms, it is possible for rights violations to occur without being able to single out particular perpetrators.

Indirect actions can also cause human rights violations as we have seen from Pogge and Miller. For Ashford, individuals who collaborate with and support unjust institutions “share indirect responsibility for the perpetrations of human rights violations that occur.”<sup>141</sup> Moreover, some of the ways we, as individuals, violate the rights of others are foreseeable and avoidable. When this is the case then we are directly responsible for the resultant harms. Importantly, Ashford recognizes that there are times when our individual causal contributions to the causal chains are unforeseeable and unavoidable.<sup>142</sup> It is in these cases, where the results of our actions are unforeseeable and unavoidable, that the institutional framework can be applied to explain why we share responsibility for the resultant human rights violations. While it is difficult for us to determine the effects of our actions, when we are a part of social institutions we are expected to “be aware of or find out about the harms caused by the social institutions of which we are members.”<sup>143</sup> We cannot be wilfully ignorant of the harms created by our social institutions in order to claim we have no responsibility for them. When a rights violation occurs, for which we share responsibility, we acquire remedial duties to compensate for the harms endured by others.

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<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid., 199.

<sup>142</sup> Ibid., 201-202.

<sup>143</sup> Ibid., 202.

Using the arguments presented by Pogge, Miller, and Ashford, institutions and individuals can be direct and indirect perpetrators of rights violations. Institutions play a clear role in rights fulfillment and rights violation, but this does not make it the case that individuals do not also play a role in rights violations. When combined, an institutional and interactional account of human rights provides a coherent picture of what constitutes a rights violation and who is obligated to fulfill the correlative duties to the right to water.

## **2.5 Conclusion**

There are many rights currently unfulfilled by individuals and institutions. I have argued the global north is engaged in actions that violate the rights of those living in the global south, and for the existence of duties to respect, to protect, and to fulfill the content of rights. Subsequent sections of this thesis will further examine the ways in which it can be said the global north violates the right to water through failing to provide safe drinking water to people (though efforts are certainly being made), and failing to respect the human right to water. Moreover, the global north fails to protect the right to water by means of ensuring the right is not violated and by failing to design institutions that avoid the creation of strong incentives to violate the right to water. Human rights are typically targeted at governments, however, individuals, governments in other countries, international organizations, and international corporations may have back-up responsibilities for fulfilling human rights when governments are unwilling or unable to respect or uphold human rights. It may be, for example, the responsibility of the UN or World Bank to monitor human rights conditions in countries suspected of human rights violations in order to promote compliance.<sup>144</sup> The authors of the UDHR clearly believed that individuals and governments both have obligations for ensuring the fulfillment of human rights.

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<sup>144</sup> Nickel, 2007, 39.

In the preamble of the UDHR, it is stated that member states have pledged themselves to achieve and promote human rights and that:

every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.<sup>145</sup>

This chapter argued for the existence of at least three duties for every basic right. We, individuals and institutions, in the global north and global south have duties not to deprive others of their rights, to protect others from deprivation, and to aid those who are deprived of their rights. Subsequent chapters will take up claims about the non-fulfillment of the right to water and present strategies for ensuring its fulfillment. Water is a human right and generates duties that ought to be fulfilled to ensure the realization of the right. The final chapters of this thesis build on the notion that the human right to water is currently unfulfilled and identifies a number of strategies that could be used to discharge one's duties with regard to this right. Chapter three examines the role of the Millennium Development Goals and Sustainable Development Goals as a strategy for fulfilling the right to water and chapter four presents water pricing as a method of rights fulfillment.

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<sup>145</sup> UN General Assembly, *Universal Declaration of Human Rights*, 1948.



## Chapter 3

### The UN Goals and the Right to Water

Various strategies have been employed to ensure individuals have access to safe water. As an international and inter-governmental organization, the United Nations has played and continues to play a pivotal role in the realization of the right to water. In 2000, the UN member states defined and set a series of goals in the Millennium Assembly to combat poverty and ensure access to certain basic necessities for all people, including safe drinking water. Millennium Development Goal (MDG) target 7C sought to halve the proportion of people “without sustainable access to safe drinking water and basic sanitation” by 2015.<sup>146</sup> In 2010, the UN officially declared water a human right and announced the success of the MDG on safe drinking water. In 2015, the Sustainable Development Goals were announced and goal #6 is meant to pick up where the water MDG left off and “ensure availability and sustainable management of water and sanitation for all” by 2030.<sup>147</sup> This chapter closely examines the role of the UN and the MDGs with regards to water and examines the benefits of its involvement in improving access to safe drinking water and, in doing so, fulfilling the right to water. This chapter also examines the newly adopted Sustainable Development Goals (SDGs) and determines whether they are better equipped for the fulfillment of the right to safe drinking water.

#### **3.1 The Millennium Development Goals**

Established at the Millennium Summit in September 2000, the Millennium Development Goals commit nations, and their leaders, to reducing extreme poverty through a series of targets

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<sup>146</sup> "UN Millennium Project | Goals, Targets & Indicators." UN Millennium Project | Goals, Targets & Indicators.

<sup>147</sup> UN, *Transforming Our World: The 2030 Agenda for Sustainable Development*, 12.

to be reached by 2015.<sup>148</sup> Given the recent conclusion of the MDG period in December 2015, we can now reflect on the water target and determine the efficacy of the Millennium Development Goals as a strategy for improving access to safe drinking water.

The MDGs consisted of eight interconnected goals aimed at reducing extreme poverty through a number of mechanisms that simultaneously addressed the differing dimensions of poverty. I am strictly concerned with the MDG related to provisioning of water services, while noting that access to safe drinking water goes hand in hand with proper sanitation techniques since successful health outcomes require that both safe water and adequate sanitation be in place. Access to safe drinking water underscores most, if not all, of the MDGs because without water one is unable realize the other goals including improving education, maternal health, gender equality, or environmental sustainability among other things.

MDG #7 pertains directly to environmental sustainability. The goal has a number of targets including target 7C that aims to halve “the proportion of people who are unable to reach or to afford safe drinking water” by 2015.<sup>149</sup> The Joint Monitoring Programme for Water Supply and Sanitation (JMP), a collaborative effort by UNICEF and the WHO, measured the water target through the examination of the proportion of people with sustainable access to an improved water source<sup>150</sup> in urban and rural areas.<sup>151</sup>

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<sup>148</sup> General Assembly resolution 55/2, *United Nations Millennium Declaration*, A/55/L2 (18 September 2000).

<sup>149</sup> Ibid.

<sup>150</sup> An improved water source is “a facility that, by nature of its construction, is protected from outside contamination, in particular contamination from fecal matter.” See UNICEF and World Health Organization, “Progress on Drinking Water and Sanitation 2012 Update, 2012, 4.

<sup>151</sup> “UN Millennium Project | Goals, Targets & Indicators.” UN Millennium Project | Goals, Targets & Indicators.

In 2010, five years ahead of schedule, the UN declared that the MDG drinking water target had been achieved. The proportion of people using an improved drinking water source increased from 76% in 1990 to 91% in 2015. Over 2.6 billion people gained access to improved drinking water sources between 1990 and 2010, 1.9 billion of whom use a piped drinking water supply on premises. Eastern Asia, Latin America, South-Eastern Asia, Southern Asia, and Western Asia successfully halved the proportion of population without access to improved drinking water sources in their regions. The only region unable to meet the MDG target was Sub-Saharan Africa, achieving a 20% increase in access and use of improved drinking water sources. As of early 2015, 147 of 196 nations had met the MDG drinking water target.<sup>152</sup> The drinking water target continues to be used as an example of the success of the MDG initiative with an estimated 663 million people left worldwide using unimproved drinking water, mostly in Sub-Saharan Africa.<sup>153</sup> In reality, the total number of people using unsafe water worldwide approximately 3 billion people (783 million using unimproved sources (assumed unsafe), 1 billion using faecally-contaminated water from improved sources, and 1.2 billion receiving water from sources at risk of faecal contamination).<sup>154</sup>

### **3.1.1 Criticisms of the MDG Water Target**

The MDGs are not without criticism some of which directly call into question the alleged success of the targets, including the water target. Some critiques of the water target stem from questions about whether the correct things were being measured “or whether these narratives incentivise the right action in the right place” as the indicators used did not properly take into

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<sup>152</sup> United Nations, *The Millennium Development Goals Report 2015*, 2015, 58.

<sup>153</sup> Ibid.

<sup>154</sup> Onda et al., 2012, 887.

account the affordability of water, informal monopolies on water points, disconnection of piped water supplies, or demand for sexual favours by water providers.<sup>155</sup>

Pogge has been highly critical of the MDGs using the first goal (to eradicate extreme hunger and poverty) as his main point of contention. MDG supporters claim global extreme poverty has decreased from 1.9 billion in 1990 to 836 million in 2015.<sup>156</sup> Pogge argues a manipulation of data is able to account for the apparent reduction in extreme poverty. A start date of 1990, rather than 2000 when the MDGs were adopted, allows the reduction of extremely impoverished people in China to be included in the calculation and the longer plan period allows for a greater population growth across the MDG timeframe. A 2013 UNU-INWEH and UNOSD report notes this same claim can be applied to the water target. In 2010, 89% of the global population used improved drinking water sources. Allegedly, almost half of the increase (of 13% since 1990) was achieved in India and China. This may be intimately connected to China's policy for reducing poverty and so is subject to criticism since most of the progress in China happened prior to the introduction of the MDGs in 2000.<sup>157</sup> A further cause for concern arises from the way the poor were counted as some groups may have been excluded from the definition of extreme poverty or extreme hunger.<sup>158</sup> Similarly, people using improved water sources were counted as having access to safe water when they may have been using unsafe water. Using

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<sup>155</sup> Malcolm Langford, "Rethinking the Metrics of Progress," in *The Millennium Development Goals and Human Rights: Past, Present and Future*, edited by Malcolm Langford, Andy Sumner, and Alicia Ely Yamin, 461-483. New York: NY: Cambridge University Press, 2013, 462.

<sup>156</sup> United Nations, *The Millennium Development Goals Report 2015*, 2015, 4.

<sup>157</sup> See UNU-INWEH and UNOSD, *Catalyzing Water for Sustainable Development and Growth: Framing Water Within the Post 2015 Development Agenda: Options and Considerations*, 2013, 7.

<sup>158</sup> Thomas Pogge, "The First UN Millennium Development Goal: A Cause for Celebration," In *Real World Justice: Grounds, Principles, Human Rights, and Social Institutions*, edited by Andreas Follesdal and Thomas Pogge, 317-338. The Netherlands: Springer, 2005, 318-328.

Pogge's line of argument, it is possible to say the drinking water target was not met and, more controversially, that the target being unmet left the right to water unfulfilled for many people. UNICEF and WHO were responsible for recording the data relevant to the drinking water target and the wording from a recent MDG report suggests each nation was responsible for ensuring the halving of its own proportion of people without access to improved drinking water sources.<sup>159</sup>

Unsurprisingly, Sub-Saharan Africa was unable to meet the water target as it has the largest number of people using unimproved drinking water sources. Indebted nations often face higher rates of unimproved drinking water usage and do not have the financial ability or infrastructure in place to combat these pervasive issues. Furthermore, if individual nations are charged with providing their data to the JMP then it is possible, and likely, that data was manipulated to suggest a nation was on track for achieving the goal, if there were any data available to provide at all. Presumably, nations would not want to say they were failing to meet their international obligations (and failing to meet the MDGs) and so governments would have incentive to provide data suggesting they were closer to achieving the goal than they truly were.

In Peru, for example, former head of the National Institute of Statistics and Informatics, Farid Mutak, claims the Garcia Government told the country only 30% of its people live in poverty when in reality 38% of Peruvians live in poverty; a significant difference of over two million people. Mutak also argues that GDP and poverty figures are politically motivated as they are often used as an indicator for determining the successes or failures of a government.<sup>160</sup> So, if

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<sup>159</sup> United Nations, *The Millennium Development Goals Report 2015*, 2015, 58-59.

<sup>160</sup> Mescoco, Jahve. "Perú: Alan García Manipula Cifras De Pobreza, Crecimiento Y Analfabetismo." Servindi. June 22, 2011. Accessed March 17, 2016. <http://www.servindi.org/actualidad/46927>.

a government wants to be re-elected it may manipulate data to suggest more progress has been made.

It is also possible that governments may say they have not significantly improved access to water sources if doing so ensures their continued reception of aid, something many nations in the global south are dependent on. Moreover, some government bodies may be so underfunded, or even nonexistent, that they cannot accurately record or process the necessary data to determine who has access to improved drinking water sources or safe drinking water sources. This is highly problematic when attempting to determine whether the human right to water is being socially guaranteed and fulfilled for many people.

Important questions also arise about what it means for a person to have access to an improved drinking water source and in what ways we can say their right to water has been fulfilled through the provision of an improved water source. An improved drinking water source is defined as “a facility that, by nature of its construction, is protected from outside contamination, in particular contamination from fecal matter.”<sup>161</sup> Improved drinking water sources include piped water, public taps, boreholes, tube wells, protected dug wells, protected springs, rainwater, and bottled water. Water is considered safe if it is “free from micro-organisms, chemical substances and radiological hazards that constitute a threat to health.”<sup>162</sup> Affordable water is defined as water that costs less than 3% of the household income.<sup>163</sup> Finally,

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<sup>161</sup> UNICEF and World Health Organization, “Progress on Drinking Water and Sanitation 2012 Update, 2012, 4.

<sup>162</sup> United Nations. United Nations Department of Economic and Social Affairs. "The Human Right to Water and Sanitation." News release, May 29, 2014. UN Water. Accessed January 3, 2016. [http://www.un.org/waterforlifedecade/human\\_right\\_to\\_water.shtml](http://www.un.org/waterforlifedecade/human_right_to_water.shtml).

<sup>163</sup> "Hrw, Decade, Water for Life, 2015, UN-Water, United Nations, MDG, Water, Sanitation, Financing, Gender, IWRM, Human Right, Transboundary, Cities, Quality, Food Security,

reasonable access to water is defined as “not more than 1000 metres from a house to a public stand post or any other improved drinking water source.”<sup>164</sup> The way the water target indicators were outlined and defined who had access to safe water and played a special role in the determination of whether the right to water is on track towards being fulfilled.

The way the water target and its indicators were defined played a crucial role in the number of people that can reasonably be said to have gained access to water. The MDG water target aimed to halve “the proportion of people who are unable to reach or to afford *safe drinking water*” by 2015.<sup>165</sup> That is, to halve the proportion of people without access to water that is free from contaminants that threaten their health; a broad goal. The target’s indicator narrowed this goal in significant ways. The indicator for the water target measured the “proportion of the population with *sustainable access to an improved water source*, urban and rural.”<sup>166</sup> This meant that what was measured was whether people had sustainable access (perhaps best understood as reasonable access (1km) to an improved water source (that is protected from outside contamination, especially fecal matter) rather than access to safe water. What the precise difference is between an improved water source and a safe water source may be difficult to

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General Comment, BKM, Albuquerque." UN News Center. May 29, 2014. Accessed March 12, 2016. [http://www.un.org/waterforlifedecade/human\\_right\\_to\\_water.shtml](http://www.un.org/waterforlifedecade/human_right_to_water.shtml).

<sup>164</sup> United Nations. United Nations Department of Economic and Social Affairs. "The Human Right to Water and Sanitation." News release, May 29, 2014. UN Water. Accessed January 3, 2016. [http://www.un.org/waterforlifedecade/human\\_right\\_to\\_water.shtml](http://www.un.org/waterforlifedecade/human_right_to_water.shtml).

<sup>165</sup> Emphasis added. General Assembly Resolution 55/2, *United Nations Millennium Declaration*, A/55/L2 (18 September 2000).

<sup>166</sup> Emphasis added. "UN Millennium Project | Goals, Targets & Indicators." UN Millennium Project | Goals, Targets & Indicators. Accessed August 2015. <http://www.unmillenniumproject.org/goals/gti.htm>.

ascertain<sup>167</sup> but there is a significant difference given that the UN felt it was necessary to provide separate definitions for these two terms.

A 2013 report notes that while the MDG drinking water target was met in 2010, giving more than 2 billion people access to an improved water source since 1990, approximately “1.8 billion of those who gained an improved source still use water known to be unsafe to drink.”<sup>168</sup> Onda et al. argue the total number of people using unsafe water worldwide is likely around 3 billion people (783 million using unimproved sources, 1 billion using faecally-contaminated water from improved sources, and 1.2 billion receiving water from sources at risk of faecal contamination).<sup>169</sup> The fact that so many people use unsafe water from “improved” sources raises a number of questions about how the water is being contaminated. It is difficult to determine whether improved drinking water sources have unsafe water, if the water is becoming unsafe when transported from the water source to the home, or if the improved water sources are not being used. Regardless, the tensions are important to understand if we hope to socially guarantee access to safe and affordable drinking water.

The articulation of the water target was problematic in terms of the gap between what is defined as “improved water sources” and “safe water sources”. The way the water target was formulated also made it difficult to ascertain whether the target, as articulated, was even met when so many of those who gained access to an improved drinking water source still drink unsafe water. In what ways, then, can it be said that the MDG water target was been met? If the

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<sup>167</sup> Perhaps the difference is that you can count improved water sources but you have to test a water source to determine if it is safe for human consumption. Improved water sources were counted as safe water sources even though the water in them may have been unsafe for consumption.

<sup>168</sup> United Nations, *The Post 2015 Water Thematic Consultation Report*, 2013, 12.

<sup>169</sup> Onda et al., 2012, 887.



MDG is unmet and significant numbers of people are using unsafe water then are we, as an international community, on track for fulfilling the right to water? There still is no social guarantee, a fundamental aspect of a right, since so many continue to have their right unfulfilled.

The use of “improved water source” and not “safe water source” as an indicator for the water target is largely problematic and is a major source of weakness for the water target. The MDG authors decided the term “improved water source” should be used because it “[made] progress easier to measure”<sup>170</sup> even while the target calls for safe access. It is not enough to provide an improved water source in a community. We must ensure sustainable access to safe water in adequate quantities. Part of the difficulty with using “safe water source” as the indicator was the perceived high cost of testing water quality and enforcing water quality standards, whereas it was easier to monitor improved sources and less funds were required up front. I say the cost of measuring safe water sources is perceived to be high because of the upfront cost of labour and materials needed to test each source. However, the cost of unsafe water on people, infrastructure, hospitals, and the economy is much greater than ensuring water is safe. Consider how burdensome and costly it is for individuals and governments to provide medical treatment because of water contamination, along with the cost of time lost from work, and the influx of people draining hospital resources for preventable illnesses.

Many improved drinking water sources contain poor quality water that is unsafe for consumption. While visiting Kiyindi, Uganda in early 2015, I saw firsthand some of the problems associated with providing access to safe drinking water. The major water source, an

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<sup>170</sup> United Nations University Institute of Water, Environment and Health and United Nations Office for Sustainable Development. *Catalyzing Water for Sustainable Development and Growth: Framing Water Within the Post 2015 Development Agenda: Options and Considerations*. UNU-INWEH, UNOSD, and Stockholm Environment Institute, 2013, 13.

underwater stream, ran into a cistern where the water was cleaned using chemical agents making it safe for human use. However, after speaking with officials, it was clear the chemical agents were not being used because of corruption in the local governmental. Many people in the community continued to use the designated water taps and pay for water they believed to be safe when in reality they were buying and consuming unsafe water. Had they been aware of this fact, some could have boiled the water before drinking it, depending on their socio-economic status. In this situation, people were drinking water they believed was safe because it came from a designated improved water source, and yet they were still drinking unsafe water.

Additionally, improved water sources are sometimes highly inaccessible both financially and physically. The affordability of water provides a massive barrier to accessing safe water. People living in the slums of Manila, Nairobi and Jakarta reportedly pay somewhere between 5 to 10 times more for their water than people living in high-income areas of those same cities, and more than most people pay for their water in the global north.<sup>171</sup> The MDG indicators did not adequately take into account the way affordability impacts access to safe water. Some of the world's poorest people were said to have improved access to water even though it came at a cost of 30% of their household budget. So while they did have access to improved water sources, and could pay for the service, they did so at the expense of other essential goods and services.<sup>172</sup> In Kiyindi, community members were allegedly charged 100 Ugandan shillings per jerry can (20L) for *safe* water from the designated taps.<sup>173</sup> In reality, individuals paid anywhere from 300-500

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<sup>171</sup> United Nations. United Nations Department of Economic and Social Affairs. "The Human Right to Water and Sanitation." News release, May 29, 2014. UN Water. Accessed January 3, 2016. [http://www.un.org/waterforlifedecade/human\\_right\\_to\\_water.shtml](http://www.un.org/waterforlifedecade/human_right_to_water.shtml).

<sup>172</sup> Langford, 2013, 463-465.

<sup>173</sup> "Water-Health Solutions: Kiyindi, Uganda - UNU-INWEH." UNUINWEH. August 1, 2010.

shillings depending on who was collecting water since women are charged more than their male counterparts and, on top of that, the water was unsafe.

Actual distance to the improved water source also services as a barrier for access to safe water. A person is said to have reasonable access to water if the improved source is not more than 1000 metres from their home. One kilometre may not seem daunting but it is arduous and time consuming to travel that distance whenever water is needed. A roundtrip of two kilometres four to six times a day is a demanding task that can take up several hours of the day. However, many people travel much further than what is deemed reasonable access to reach their water source. In 2010, a woman in Africa and Asia walked on average six kilometers to collect water (six times as far as what is considered to be reasonable access to water).<sup>174</sup> Pommells notes that altogether African women spend approximately 200 million hours per day collecting water in 40-pound jerry cans.<sup>175</sup> Water collection is a taxing task and those not physically able to access the improved water source may be forced to rely on water vendors or collect water from unsafe sources nearby. In addition to being a physically demanding task, water collection is also a dangerous chore for the vulnerable populations who primarily collect water, women and girls. Women are at an increased risk of being subject to gendered violence, sexual assault, and rape because they must travel long distances in remote terrains to get to the water source.<sup>176</sup> Moreover, as a result of the number of hours needed to collect water, girls are less likely to attend school since water collection is commonly thought to be a gender specific task.

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<sup>174</sup> UN-Water Decade Programme on Advocacy and Communication and Water Supply and Sanitation Collaborative Council, *The Human Right To Water And Sanitation*, 2010. Web. 1 May 2016.

<sup>175</sup> Pommells, 2015, 5.

<sup>176</sup> Pommells, 2015.

It is not enough to merely provide improved drinking water sources because, as I have argued, the provision of these sources does not mean people are gaining access to safe water. If the majority of people in a region are not enjoying their right to water then other steps need to be taken to socially guarantee, at a reasonable level, access to safe drinking water. To do so, education must be provided so that water users are able to effectively access the sites. This education must be culturally specific, non-patriarchal, and traditional water methods should be preserved and promoted where possible.<sup>177</sup> Education and cultural awareness could help address the barriers present in accessing water. These problems must be addressed so that it is not only theoretically that people gain access to safe drinking water, but that access to safe water is a socially guaranteed reality.

### **3.1.2 Other Weaknesses of the Millennium Development Goals**

Even if we do not agree on whether the drinking water target was met, UN reports identify the weaknesses inherent in the MDGs. The goals were meant to be multidimensional in nature; however, this kind of approach never evolved during the process of achieving the targets.<sup>178</sup> While the UN and the governments of member states understood the importance of water in achieving the other targets, they failed to act on this knowledge leaving the goals isolated from one another. The MDG framework also lacked accountability, as there was no specific responsibility assigned for goal achievement. Lack of direct responsibility allows for an environment where no one steps up to take charge of achieving the goal. Was it, for example, the

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<sup>177</sup> In Uganda, for example, some groups are hesitant to drink chlorinated water because of the taste and, more importantly, because they believe it leads to impotence. Traditional filtering pots are often used to filter impurities from water making it safe to drink.

<sup>178</sup> UNU-INWEH and UNOSD, *Catalyzing Water for Sustainable Development and Growth: Framing Water Within the Post 2015 Development Agenda: Options and Considerations*, 2013, 11.

responsibility of international institutions, national governments, subnational governments, local authorities, or non-governmental organizations to halve the proportion of people without access to an improved drinking water source? If a national government was not making progress towards the goal, who, if anyone, could they turn to for help? If a nation fails to meet the MDG target then who is responsible for the failure and what are the consequences? Lack of accountability can also lead to a lack of recorded progress or lack of progress entirely. The MDGs did not address the inherent inequalities present in our world. The goals often neglected the most vulnerable of our global population, the poor and the marginalized, who often have the most difficulty in achieving progress.<sup>179</sup>

A major weakness of the water target (goal 7c) was that the *global* picture painted an image of success through access to improved drinking water source. At the national level, the image was not so rosy.<sup>180</sup> By placing the onus on individual nations to halve their proportion of people without access to an improved water source, it was clear from inception what nations were likely to achieve the goal and which countries were liable to fall short.<sup>181</sup> Setting the goal up in this way ensured the population easiest to provide access to, in the global north, would reach their targets first. It is much easier for Canada to halve the proportion of people without access to an improved drinking water source because of Canada's economic abilities and the small percentage of people lacking access to safe water. Given Canada's economic abilities it

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<sup>179</sup> Ibid.

<sup>180</sup> Ibid.

<sup>181</sup> Criticism has been raised about the transformation of the MDGs into national goals, rather than global goals, and how this impacted the ability of countries to meet the targets since national goals were easier to attain in middle-income countries versus in low-income countries. See Langford, 2013, 469.

should be surprising that many rural and indigenous communities still consume unsafe water.<sup>182</sup>

Consider how difficult it would be for a country that is highly indebted to halve the proportion when over 70% of their population lacks access. Inequality was not properly taken into account so the focus moving forward should be on universal coverage and not just providing access to the easiest-to-reach populations.

Another weakness of the target is the consideration of absolute terms. MDG 7C focused on halving the proportion of the population without access to an improved drinking water source. Nevertheless, as a result of population growth “the number of people without an improved source in urban areas has actually increased from the 1990 baseline, a trend that the assessment of the goal achievement does not take into account.”<sup>183</sup> Halving the proportion of people does not entail actually halving the number of people without access. Halving the proportion and halving the population are two distinct ways of calculating access to improved drinking water sources. This is why it is possible so say that the number of people without access has gone up while the claim can be made to have met the target. Arguably though, the target has not even been met given the huge numbers of people who are said to have gained access but are still drinking unsafe water.

MDG officials were able to retrospectively acknowledge the strengths and weaknesses of the goals. However, in acknowledging the weaknesses, we must be careful not to diminish the

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<sup>182</sup> 400 of 618 First Nations communities had water problems between 2004-2014. The Neskantaga First Nation community has been under a boil water advisory for 20 years. See Joanne Levasseur and Jacques Marcoux, "Bad Water: 'Third World' Conditions on First Nations in Canada." CBCnews. October 15, 2015. Accessed June 02, 2016. <http://www.cbc.ca/news/canada/manitoba/bad-water-third-world-conditions-on-first-nations-in-canada-1.3269500>.

<sup>183</sup> UNU-INWEH and UNOSD, *Catalyzing Water for Sustainable Development and Growth: Framing Water Within the Post 2015 Development Agenda: Options and Considerations*, 2013, 11.

effects of those weaknesses. There must be a commitment to learn from the failures of the MDGs and efforts should be made to ensure the same failures do not recur. Targets and indicators should be outlined with utmost care to ensure they are not pre-emptively determining the outcome.<sup>184</sup>

We must do the final part of any right – we must socially guarantee the right to water or else our institutions and governments are merely paying lip service to the right to water while leaving the right largely unfulfilled.

### **3.2 The Sustainable Development Goals**

The MDGs taught us many important lessons. Officials now recognize that targets and indicators must be SMART (specific, measurable, achievable, realistic, and time bound).<sup>185</sup> How possible it is to make the targets SMART is debatable since measurability is a substantial problem to overcome, especially when it comes to safe water access. Measurability poses a problem for data collection because measuring access to safe water requires the allocation of sufficient human, technical, and financial resources. Exacerbating the difficult task of data collection further is the fact that many countries in the global south do not have adequate human, technical, and financial resources to monitor access to safe water. The Sustainable Development Goals (SDGs) targets should also be able to reflect on any changes in the economic and political landscape of individual nations and global politics as a whole. The targets must have a broad focus that highlights the interconnectivity of the targets to be achievable.<sup>186</sup>

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<sup>184</sup> Something the Joint Monitoring Programme has been criticized for.

<sup>185</sup> UNU-INWEH and UNOSD, *Catalyzing Water for Sustainable Development and Growth: Framing Water Within the Post 2015 Development Agenda: Options and Considerations*, 2013, 17.

<sup>186</sup> Ibid.

The SDGs were endorsed in September 2015 at a meeting at the UN Headquarters in New York and came into effect on January 1, 2016.<sup>187</sup> The goals aim to step in where the MDGs left off and balance the three dimensions (economic, social, and environmental) of sustainable development.<sup>188</sup> The SDGs aim to prioritize those who are the furthest behind and work with vulnerable populations who are often overlooked in policy work. In doing so, the SDGs are hoped to correct the MDGs uneven progress in development.<sup>189</sup>

The SDGs authors note each country “has primary responsibility for its own economic and social development” and in doing so fail to recognize the role other nations play in the economic and social development of a country.<sup>190</sup> As was previously demonstrated, nations are highly interconnected given our globalized world. Hence, it may not be so simple to say country A is responsible for the economic and social development within its border when foreign nations B and C have a history of exploiting and manipulating country A, placing it in its current fragile social and economic position.<sup>191</sup> Point 69 of the SDG document states there is a “need to assist developing countries in attaining long-term debt sustainability... maintaining sustainable debt levels is the responsibility of the borrowing countries... lenders also have responsibility to lend in a way that does not undermine a country’s debt sustainability.”<sup>192</sup> While the SDG statement recognizes some responsibility on the part of the lenders, the primary onus remains on the

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<sup>187</sup> United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development*, 2 and 6.

<sup>188</sup> *Ibid.*, 2.

<sup>189</sup> *Ibid.*, 11.

<sup>190</sup> *Ibid.*, 9.

<sup>191</sup> As we have seen above this creates remedial duties to those nations and individuals we have harmed.

<sup>192</sup> United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development*, 25.



borrowing country and fails to take into account the reasons a country may be impoverished and require loans in the first place.

SDG # 6 aims to “ensure availability and sustainable management of water and sanitation for all” by 2030.<sup>193</sup> Specifically, goal 6.1 is to “achieve universal and equitable access to safe and affordable drinking water.”<sup>194</sup> Like the MDG water target, the SDG water goal also has an indicator. In determining whether universal and equitable access to safe and affordable drinking water for all is met the “percentage of population using safely managed drinking water services” will be measured.<sup>195</sup> Questions arise about what constitutes a “safely managed water service” and how this can be efficiently and effectively measured. Any goal that suggests universal access, though admirable, seems as if it will inevitably fall short since universal access, unless understood as Shue’s reasonable social guarantee, cannot be achieved unless all people have access to safe and affordable drinking water; a daunting and seemingly impossible task.

Like the MDGs, the SDGs attempt to eradicate extreme poverty and aspire to improve the lives of all people. The SDGs are also universal, meaning that all countries must meet the targets. The SDGs focus on the broad goal of sustainable development with a global outlook while the MDGs focused more specifically on developing economies.<sup>196</sup>

It is through goal setting that we can better track the progress being made in improving society. The involvement of politicians and legal frameworks is essential to the management and

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<sup>193</sup> United Nations, *Open Working Group proposal for Sustainable Development Goals*, A/68/970, 2015.

<sup>194</sup> Ibid.

<sup>195</sup> United Nations Economic and Social Council. *Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators*. E/CN.3/2016/2 (March 8-11, 2016). Accessed April, 2016.

<sup>196</sup> UNU-INWEH and UNOOSD, *Catalyzing Water for Sustainable Development and Growth: Framing Water Within the Post 2015 Development Agenda: Options and Considerations*, 2013, vi.

use of water in a setting that supports sustainable development. Part of this legal framework consists of the UN right to water and sanitation and the almost 80% of nations who have endorsed this right.<sup>197</sup> What does recognition of a right do in reality? Have nations recognized the right to water in their own nations' legal frameworks? What duties does the right to water require and who is obligated to fulfill them? We must understand why not all countries recognize the right to water and ensure that those who do recognize the right, at least legally, are not endorsing the right to save face while having no intentions of implementing real policies to improve access to safe water. Regarding accountability and transparency, the SDGs must place the burden of responsibility on someone's shoulders to ensure the water target is met and the human right to water is fulfilled.

If we ever hope to ensure safe and affordable access to water for all then we need to be aware of the obstacles preventing universal access to safe and affordable water. It would be unfortunate if the right to water was allegedly secured when the right remained unfulfilled for large portions of the global population. This would provide the illusion of safety for water users and might act as a hindrance for future projects aimed at ensuring access to safe water in actuality. The only way for the SDGs to avoid this misleading claim is to investigate the reasons why 3 billion people are still using unsafe water and assess whether strategies like water pricing can help in fulfilling the right. Only when this is properly understood can progress be made to ensure the barricades to safe water are removed and the right is socially guaranteed. Until this is done, it can, with certainty, be said the human right to water is unfulfilled (since so many lack access to the object of their right) and will remain so until effective strategies are implemented that ensure large-scale fulfillment of the right.

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<sup>197</sup> Ibid., 35.

### **3.3 Conclusion**

The UN plays a pivotal role in any discussion on the right to water. The UN's approval and endorsement of the right to water through its member states showed an important stepping stone in discussions regarding water access. The UN Millennium Development Goals and now Sustainable Development Goals are just one of the many ways the international community is addressing the right to water. Goal setting is useful in getting other stakeholders on board with the provision of safe water. However, goal setting becomes more strenuous when it comes time to determine how best to coordinate and allocate efforts. Many states agree, at least in principal with the right to water, but have trouble when it comes to distributing and allocating responsibility. The perceived arduousness of fulfilling the right to water leads stakeholders to feel less than enthusiastic about the goal and makes it harder for them to commit to a goal. In 2010, when the right to water was officially endorsed, the UN outlined some of the common misconceptions of the right. The most important and relevant misconception is that the right to water entitles people to free water. According to the UN, the right to water need only be affordable for all and "people are expected to contribute financially or otherwise to the extent that they can do so."<sup>198</sup> How can we tell if water is affordable for all? What if people cannot afford to pay for water? In what ways can people contribute "otherwise" rather than financially to the provision of safe water? It is questions about the cost of water and water pricing as a strategy for the fulfillment of the right to water that is the task of the subsequent chapter.

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<sup>198</sup> UN-Water Decade Programme on Advocacy and Communication and Water Supply and Sanitation Collaborative Council, *The Human Right To Water And Sanitation*. 2010. Web. 1 May 2016.

## **Chapter 4**

### **Water Pricing: A Strategy for Right's Fulfillment**

As a result of safe drinking water being a right, relevant duties are created to avoid depriving individuals of water, to protect individuals from water deprivation, and to aid those deprived of water. Since UN Resolution 15/9 announced, in 2010, safe drinking water as a human right, the UN and other international organizations have attempted to find ways to secure the right to water, especially for those populations who have been unserved or underserved and therefore unable to access safe drinking water in any meaningful way. Water pricing, the idea that providing water services costs some amount of money and this cost must be recovered, is one strategy being used by international organizations and national governments to secure access to safe drinking water.

In this chapter, I explore the strengths and weaknesses of water pricing. In doing so, I argue that water pricing can both violate and fulfill the right to water depending on the context. First, a brief history of freshwater provisioning is provided to show water pricing is not a new phenomenon. However, in many historical examples persons unable to secure access to water were not turned away according to variations of “The Right of Thirst,” the idea that those with water should provide water to those without. Next, I describe how water came to be understood as an economic good in contemporary society using the so-called 1992 Dublin Principles (The Dublin Statement on Water and Sustainable Development). I then turn to an examination of water pricing and provide a case study of a water pricing strategy from South Africa. In the final section of this chapter, I provide arguments showing the nonfulfillment of the human right to water can be understood, depending on the water pricing strategy used, as a violation of the right.

Given this, I conclude that taxes (national or global) could be used as one strategy to cover the cost of 50L of water/person/day just as taxes are used to cover other expenses in, for example, Canada deemed to be important including healthcare and welfare services.

#### **4.1 A History of Drinking Water**

Water is one of the few resources one cannot live without. Without access to water, a person can very quickly go from thriving to dying. Without access to safe drinking water, individuals are at risk of contracting water borne illnesses that severely decrease quality of life and often result in premature death. Every one of us is vulnerable to the quality and quantity of the water we consume. Both lack of water resources and lack of safe drinking water do not discriminate against their victims but those who are most commonly affected by lack of water and unsafe drinking water are the poor and marginalized populations of the world.<sup>199</sup>

Understanding water as a scarce resource is not a recent trend. Historically, societies have been governed by various rules recognizing water's importance and potential scarcity. For thousands of years, human societies have had to come to terms with the challenges of supplying both adequate quality and quantities of drinking water.<sup>200</sup> Water not only plays the role of a physical resource, whereby it is required for survival, but also a cultural, social, political, and, as we shall see, an economic resource.

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<sup>199</sup> In most countries in OECD countries, 100% of the population has access to safe drinking water. OECD nations are, however, some of the richest countries in the world. Compare this to the fact that roughly 880 million people in the global south do not have access to safe drinking water. See OECD, "Policy challenges related to water pricing," in *Pricing Water Resources and Water and Sanitation Services*, OECD Publishing, 2010, 67-68.

<sup>200</sup> James Salzman, *Drinking Water: A History*, New York, NY: Overlook Duckworth, 2012, 46-47.

#### 4.1.1 The Right of Thirst

One of the oldest known water laws comes from Jewish law in Ur, Mesopotamia, circa 3000 BCE. According to this law, water, like many other resources, was common property and this notion was reflected in the Talmud which states “rivers and streams forming springs, these belong to every man.”<sup>201</sup> The local populations communally owned all naturally occurring water. If one came upon a water source, like a river or stream, then one was able to consume the water by right, though not all naturally occurring water is readily accessible. In many circumstances water came from wells that had to be dug to gain access to water. In these cases, well water was viewed as a community resource, but was not free to whomever and for whatever purposes. Access to well water was prioritized according to the water’s intended use. Importantly, drinking water was given priority over water for irrigation and agriculture. Salzman notes, however, the highest priority “for access was granted to those in need, regardless of whether or not they belonged to the well’s community of owners.”<sup>202</sup> This Talmudic law amounts to what is known as the “Right of Thirst” whereby a person in need of water is able to gain priority access to the water source and cannot be denied drinking water.

Adherents to Judaism were not the only ones to have a conception of a Right of Thirst. Both Judaism and Islam viewed water as a gift from God to all his peoples. According to Islam, sharing water was understood to be a holy duty and “water for basic survival was a right common to those inside and outside the community.”<sup>203</sup> Islamic water law was adopted into the

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<sup>201</sup> Dante A. Caponera and Marcella Nanni, *Principles of Water Law and Administration: National and International*. 2<sup>nd</sup> Edition. Rotterdam, Netherlands: CRC Press, 1992, 22.

<sup>202</sup> Salzman, 2012, 50.

<sup>203</sup> *Ibid.*, 51.

legal code of the Ottoman Empire and can still be seen in practice by the Bedouin in the Negev and the Berbers in Morocco.<sup>204</sup>

Other societies also viewed water in special ways and assigned rules to govern its use. The Aborigines of Australia did not distinguish between the uses of water and the community closely protected the water resource.<sup>205</sup> However, as we have observed in the Judaic and Islamic traditions, those who requested drinking water from a community could not be denied access. The takeaway from these historic examples is that across cultures and historical periods people rarely turned away those in need of water. The reason was that one could easily find themselves in the reverse circumstance – that is, one could, quite easily, be the person in need of water. Thus, while drinking water has been closely monitored and protected by communities, those who find themselves in need of drinking water were rarely, if ever, turned away, pointing to the widespread acceptance of water as a moral right, since access to water was not protected by law. Similarly, the fact that thirsty individuals were not turned away also shows that communities and individual well owners believed they had a duty to provide drinking water to those in need and felt obligated to fulfill this duty.

#### **4.1.2 Rome and the Lacus**

Communities have had laws governing water usage for millennia; Rome, however, was the first major city to manage drinking water as a priced resource.<sup>206</sup> The waters of the Marcia aqueduct (Rome's third aqueduct), built in 144 BCE, were primarily used for drinking water with

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<sup>204</sup> Ibid.

<sup>205</sup> Ibid.

<sup>206</sup> Ibid., 53.

approximately 50% of the water going to private use and roughly 25% going to the city's public water basins, *lacus*.<sup>207</sup>

The *lacus* served one primary function – to provide Romans with the water needed for domestic use. The *lacus* were so common that most Romans collected their water from these public basins. All water retrieved from the *lacus* was free of cost and readily available to all Romans.<sup>208</sup> Not everyone, however, chose to withdraw their water from the *lacus* and the Roman economic system was heavily dependent on the demand for private water. Approximately 40% of water delivered in Rome was delivered to private buildings, including private households. The convenience of piped water delivered to a house came at a cost, a special water tax called a *vectigal*. The amount of tax one had to pay depended on the size of the water supply nozzle in the building, rather than the amount of water actually used. Because of the constant flow of water through the pipes, it is estimated the amount of water delivered to a Roman household per day was equivalent to a modern household's water usage for two months.<sup>209</sup> Having piped water into a household was and still is a sign of considerable wealth.

The Roman water system, therefore, had two distinct yet interconnected components connected through economics: the *lacus* and the *vectigal*. The funds raised by the *vectigal* remained an integral part of Roman water infrastructure and the funds were used to cover the costs of maintaining the water system and allowed the *lacus* to remain functional. Hence, for those who were affluent enough to afford piped water services water was a priced good and the

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<sup>207</sup> Ibid., 54.

<sup>208</sup> In some cities, such as Pompeii, the *lacus* were only 150 feet apart from one another. Compare this the fact that the UN recognizes reasonable access to an improved water source as less than 1 kilometer; See Salzman 2012.

<sup>209</sup> Salzman, 2012, 54-55.



affluent paid for the luxury of having pipes bring water to them.<sup>210</sup> Roman leaders recognized the importance of maintaining their system of water delivery and the *vectigal* provided a secure source of money for infrastructure maintenance and development. And yet, water for the average Roman was free for the taking – from the *lacus* or nearby rivers. If we transfer this line of thinking into modern society, water from the *lacus* was a completely subsidized municipal service.<sup>211</sup>

It is clear that to some extent, water was understood differently in Rome compared to communities that upheld the Right of Thirst. Nevertheless, what remains undeniable is the clear expression of the moral right to water present throughout the historical examples. For Rome, water was understood as both a public good and private good. It is Rome's classification of water as a private good that enabled the city to provide cross-subsidized drinking water to ensure that drinking water retained its public nature. This model of subsidized drinking water would continue for some 500 years before evolving into a system more recognizable to our present water systems.<sup>212</sup>

Rights-based water management has existed since the formation of communities. This is not to say that ancient communities had entrenched laws providing citizens with the right to water through legal doctrine. Instead, many ancient communities, like the ones mentioned above, seem to have acknowledged drinking water as a moral right – something a person could not be denied on the basis of their humanity, especially when in dire need. Rules, whether customary or codified, have traditionally governed the use of water, and often prioritized drinking water over other water uses.

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<sup>210</sup> The water itself was free, the wealthy paid for the mode of delivery.

<sup>211</sup> Salzman, 2012, 56.

<sup>212</sup> *Ibid.*, 57.

Payment for water services has also existed for at least a few thousand years. Water rights and water markets have often coexisted alongside one another, as seen in the case of Rome. As a result, it can be difficult to assess whether and to what extent water pricing may contradict theories of human rights. Some authors argue that charging individuals for water does not violate rights while others argue for the opposite, that water should be free because it is a human right. To determine if water pricing results in violations of the human right to safe drinking water we must look at particular examples. It is not possible to claim all water pricing initiatives violate the right to safe drinking water on the basis of a handful of particular examples. We can, however, examine cases of water pricing and determine the benefits and burdens of the strategies and make assessments about which strategies are preferable. The mere existence of water pricing does not entail that those unable to afford water will be denied access to it, but practical difficulties can make it difficult for people to gain access to safe water when pricing strategies are employed. Historically, those with the means able to do so have been able to pay for water services. Where this discussion becomes more cumbersome is when individuals are unable to afford to pay for safe drinking water.

#### **4.2 Water Becomes an Economic Good**

Drinking water has largely been viewed as a public good throughout history, with some exceptions. Over the last several decades this notion has been challenged as society increasingly views water as a private good leading to water pricing and the privatization of water systems. The global north, with a few exceptions, has primarily public water systems whereas the global south relies chiefly on privatized (and in many cases, informal) water systems.<sup>213</sup> The transition

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<sup>213</sup> Most water systems in the global north are publicly subsidized and it is unlikely that their water systems will ever be completely privatized because citizens of these countries would

from viewing water as a public good to a private and economic good came over several decades and is worth mentioning in some detail.

A major turning point for water pricing came from the *Dublin Statement on Water and Sustainable Development* in 1992. The Dublin Principles arose from an international conference on water and the environment where it was said that human health and welfare were at risk “unless water and land resources [were] managed more effectively in the present decade and beyond than they [had] been in the past.”<sup>214</sup> Out of the conference came four guiding principles that significantly impacted the way the world saw not only water, in a broad sense, but drinking water. These principles are:<sup>215</sup>

1. Fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment.
2. Water development and management should be based on a participatory approach, involving users, planners and policy-makers at all levels.
3. Women play a central part in the provision, management and safeguarding of water.
4. Water has an economic value in all its competing uses and should be recognized as an economic good.

Most pertinent for my discussion is the proclamation of water as an economic good in all its uses. Water should, according to the Dublin Statement, be understood as an economic good, and just like any other good water should come at a cost. Water pricing gained popularity during the 1990s, resulting in and because of the Dublin Principles, as “a policy intervention tool that could

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protest the high price of water. This is interesting given the fact, as we shall see, that full cost recovery pricing is often seen as necessary in the global south. See Rahaman, Everett, and Neu, 2013.

<sup>214</sup> United Nations, “The Dublin Statement on Water and Sustainable Development,” Dublin, Ireland, 1992.

<sup>215</sup> Ibid.

be used to affect the environmentally, socially, and economically efficient use of water.”<sup>216</sup> Beginning in the late 1980s and early 1990s, international development agencies began promoting “water pricing initiatives and conditioned financial help on having pricing schemes... as part of the government obligations in the project.”<sup>217</sup> Due to increased attention on water and environmental issues, many countries have turned towards water pricing as a policy tool to help manage water consumption. Dinar et al. note that while everyone agrees that water is essential for life, the more challenging aspect has to do with how water should be regulated by society. There is no single best way of managing water resources, and so there is no single water pricing strategy that fits all regions and countries.<sup>218</sup> Water pricing strategies must be examined to determine whether they contribute to the fulfillment of the right to water or whether they violate the right to water and prevent individuals from securing access to safe drinking water.

### **4.3 Water Pricing: An Analysis**

Water pricing has become more popular and widely implemented in recent decades. Water pricing can be implemented in many ways and can be managed publicly, privately, or through a public-private collaboration. Because of the various needs of water users, there is no single best approach for water pricing as the cost of water must be malleable so that it can face different situations and needs depending on particular water sectors.<sup>219</sup> There are many clear benefits to water pricing for countries in the global south. This chapter does not have the length necessary to weigh all the strengths and weaknesses of water pricing against one another.

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<sup>216</sup> Ariel Dinar, Víctor Pochat and JoséAlbiac- Murillo (eds.), “Introduction,” In *Water Pricing Experiences and Innovations*, E-Book: Springer, 2015, 2.

<sup>217</sup> Ibid.

<sup>218</sup> Ibid., 3.

<sup>219</sup> Ibid.

However, I discuss some of the most pertinent and popular arguments in favour of water pricing and provide some objections to those claims.

One of the most significant ways water pricing benefits the global south is through providing financial resources for the development of water infrastructure. Generally speaking, many countries in the global south lack adequate water supply infrastructure, especially in the poorest urban areas, and rural areas.<sup>220</sup> Across many regions and countries, public water utilities do not have the funds necessary to build new and maintain current water infrastructure. Simply put, the water provision available in developing countries is subpar resulting from the lack of capacity of public utilities.<sup>221</sup> Hence, there has been a considerable shift from public water utilities to private water utilities in the global south. The privatization of water can range from complete privatization of water infrastructure to public-private agreements, to management contracts, and even leases.<sup>222</sup> The provision of water is not limited to large-scale endeavours as most countries in the global south have an informal water sector that has stepped in to provide water delivery services. Informal water providers, through the use of tanker trucks and bicycles, transport water from the source to populated areas to sell the water as a commodity and consumers are heavily charged for purchasing the water.<sup>223</sup>

The privatization of water services provides multiple benefits and many argue, “the answer to safe drinking water in the developing world lies in privatization.”<sup>224</sup> When the public sector is unable to come up with the capital required for water infrastructure, the private sector

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<sup>220</sup> Salzman, 195.

<sup>221</sup> Ibid., 199.

<sup>222</sup> Ibid., 200

<sup>223</sup> Erik B. Bluemel, “The Implications of Formulating a Human Right to Water,” *Ecology Law Quarterly* 31 (2004): 959.

<sup>224</sup> Salzman, 2012, 200.

can typically gather the technological resources and capital necessary for investments that improve water services and ensure efficient management of the water system. Thus, one benefit of a private water system is the increased access to private capital. Private companies, driven by profit, focus on efficiency and have access to much larger sums of money in shorter periods of time than their counterparts, local governments.<sup>225</sup> Another benefit of privatization is that the water services are less vulnerable to corruption than when they are under the control of local governments.<sup>226</sup> Public water systems are left in the hands of local governments and individual politicians, who are easily corrupted, in developing countries, and may not make the best use of the resources and capital available for water infrastructure.<sup>227</sup>

This being said, the problem with public water infrastructure runs deeper than most of us would like to admit. It is indeed a grave problem that public water utilities are often unable to come up with the necessary resources and capital to maintain existing infrastructure or build new infrastructure and water treatment plants. This problem however, requires much more attention than is often given to it within the literature on water pricing.

The international community is responsible for at least some of the current inability of countries in the global south to come up with the necessary public funds to cover the cost of water infrastructure. International development agencies, beginning in the early 1990s, promoted “water-pricing initiatives and conditioned financial help on having pricing schemes... as part of

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<sup>225</sup> Ibid.

<sup>226</sup> Ibid, 201

<sup>227</sup> There is growing evidence to suggest that privatization can promote corruption in the global south. Moreover corruption, through bribes, has been widely accepted in business negotiations between the global north and global south and was only recently (1999) *curbed* by the global north. See Rahaman, Everett, and Neu, 2013; and Pogge, 2007.

the government obligations in the project.”<sup>228</sup> This meant “international financial institutions funded by governments often made privatization a core condition for lending funds to nations.”<sup>229</sup> Put differently, when poor nations were unable to pay back their loans, the World Bank and International Monetary Fund agreed to renegotiate the loans *on the condition* that Structural Adjustments Programs (SAPs) be implemented in the countries requiring the renegotiation. SAPs required nations to sell off their public enterprises and utilities and privatize all essential public services, including water.<sup>230</sup> In these cases, it can easily be argued that countries renegotiating their loans were involved in the kind of business interactions and exploitation that Richard Miller warns against. Indebted countries, in dire need of money, had little choice but to accept the conditions of SAPs and so were forced to privatize their water services in order to get the loans renegotiated.

The 1990s were a crucial time for water pricing, as again during the 1990s poor nations were encouraged by various international organizations and international financial institutions to “let the big European water corporations run their water systems for profit” and by 2006 most loans regarding water were conditional on privatization.<sup>231</sup> Examples of this can be seen in the IMF loan conditions that explicitly contain water privatization and cost recovering conditions as a requirement of the loan. Countries including Benin, Honduras, Rwanda and Senegal were required to transfer ownership of their water in order to receive their IMF loans.<sup>232</sup>

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<sup>228</sup> Ariel Dinar, Víctor Pochat and JoséAlbiac- Murillo (eds.), “Introduction,” In *Water Pricing Experiences and Innovations*, E-Book: Springer, 2015, 2.

<sup>229</sup> Salzman, 2012, 200.

<sup>230</sup> Maude, Barlow, *Blue Covenant: The Global Water Crisis and the Coming Battle for the Right to Water*, Toronto, Ontario: M & S, 2007, 38.

<sup>231</sup> Ibid.

<sup>232</sup> Rahaman, Everett, and Neu, “Trust, Morality, and the Privatization of Water Services in Developing Countries,” *Business and Society Review* 118, no. 4 (2013): 456-457.

### 4.3.1 Water Pricing as a Deterrent

The next major strength of water pricing is that it is able to deter wastefulness and through this water pricing is able to conserve water, and thus protect against environmental degradation. As the standard of living and income has significantly increased over the last several decades, a growing middle class has led to a “sharp increase in water use” that is ultimately unsustainable.<sup>233</sup> Most, if not all, literature on water pricing emphasizes its ability to deter wasteful water users into using water more efficiently to save money.<sup>234</sup>

Yet, there are problems with the way water pricing is portrayed as deterring wastefulness and promoting water conservation. Caroline Van den Berg notes “there is disagreement on what effect the different water prices have on consumer behaviour” because little empirical work has been done on this matter.<sup>235</sup> Most literature on water pricing appears to take for granted the statement that water pricing deters wastefulness, a point that is not as straightforward as many authors assume it is. I was only able to find one source, Van den Berg, which cited information about the deterrent effect of water pricing, leading me to believe the deterrent effect is considered common knowledge in the water-pricing literature. Van den Berg’s chapter directs the reader to a paper by Dalhuisen et al. as proof of the statement that “pricing is an important means to reduce water consumption.”<sup>236</sup>

Dalhuisen et al. present a meta-analysis of the price and income elasticities of residential water demand. The aim of their article is to assess the potential of demand-oriented policy

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<sup>233</sup> UNESCO. *Water for a Sustainable World: The United Nations World Water Development Report 2015*. Paris: UNESCO, 2015, 10.

<sup>234</sup> For literature which notes the deterrent effect of water pricing see Dinar et al. 2015; Van den berg 2015; Mejia et al. 2015; CMAP 2012; Ayoo and Horbulyk 2008.

<sup>235</sup> Van den Berg, 2015, 444.

<sup>236</sup> Ibid., 452.



measures through a thorough understanding of consumer responses to price and income changes. They analyzed 64 studies from 1963-2001 with 314 price elasticity estimates and 162 income elasticity estimates of residential water demand.<sup>237</sup> The authors noted the analysis had a “distinct bias towards the United States” and the “elasticities in Europe and other locations are distinctly different from those in the United States.”<sup>238</sup> This analysis, however, has been widely cited across water pricing literature to prove the deterrent effect of water pricing around the world.<sup>239</sup>

Van den Berg uses Dalhuisen et al.’s work to draw the conclusion that water pricing is an important way of reducing water consumption, but this conclusion cannot be drawn from the analysis. An analysis of water pricing in the United States, or the global north more broadly, is not representative of the effects of water pricing in the global south, let alone all cities in the US. An analysis of residential water demand taken from a segment of the US population is not representative of all residential, urban, and rural locations. Moreover, Dalhuisen et al. set out to improve upon the Epsey, Epsey, and Shaw analysis published in 1997 and covering journal articles from 1967-1993 with a specific focus on price elasticity of residential demand for water in the United States.<sup>240</sup> Yet, Epsey, Epsey, and Shaw conclude, “policy makers in one geographical area would do well... to find studies done in their area” rather than extrapolate one set of water pricing schemes onto various regions.<sup>241</sup> Still, Dalhuisen et al. are often cited as proof that water pricing creates a deterrent effect on water usage around the globe.

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<sup>237</sup> Dalhuisen et al. 2003.

<sup>238</sup> Ibid., 295 and 306.

<sup>239</sup> This analysis has been cited over 446 times and so considered to be widely accepted.

<sup>240</sup> Epsey, Epsey, and Shaw, 1997.

<sup>241</sup> Ibid., 1373.

I find it difficult to assert the claim that water pricing promotes conservation given the apparent lack of proof for this claim. However, let us assume for argument's sake that effective water pricing does promote water conservation; there are still obvious problems with this claim.

First, the problem I am attempting to grapple with is that of water required for basic subsistence (50L/person/day). Water used for basic needs is not wasteful consumption and the amount being used for basic needs does not need to be conserved or deterred; the water is required to live. If we want to deter wastefulness then we ought to be targeting mass consumers of water: the agricultural industry. A UN report claims the agricultural industry is the largest user of water resources and accounts for approximately 90% of all freshwater withdrawals in most of the world's least-developed, water-scarce countries.<sup>242</sup> Perhaps the agricultural sector should pay more for its water usage so as to conserve water usage within the sector.

Second, on an individual level, water users in the global north are more wasteful than their counterparts in the global south, and tend to receive water at subsidized cost allowing them to waste water at a cheaper cost. This of course has exceptions and is not limited to the global north-global south dichotomy. Within the global south there are individuals who consume excess amounts of water and whose wastefulness ought to be deterred. My claim broadly, however, is that those with the money to pay for water are more likely to use excessive amounts of water to, for example, water lawns, fill pools, and run long showers. Given the high discrepancies between incomes both within and outside of countries in the global south, there exists the likely possibility that the “economically powerful will waste water while the poor will pay the price”<sup>243</sup>

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<sup>242</sup> UNESCO, *Water for a Sustainable World: The United Nations World Water Development Report 2015*. Paris: UNESCO, 2015, 11.

<sup>243</sup> Vandana Shiva, *Water Wars: Privatization, Pollution, and Profit*. Toronto, Ontario: Between the Lines, 2002, 31.

since the poor will be the first group that cannot afford safe water while the rich will continue to be able to afford being wastefulness.

#### **4.3.2 The Cost of Water Pricing**

Water pricing literature does not say what exactly the true cost of water is or should be since the cost depends on a number of variables. There are three components for determining the true cost of water. The true cost of water must cover (i) capital for infrastructure; (ii) operating costs for pumping, treating and supplying water; and (iii) management costs for running the bureaucracies responsible for water delivery. Even with these components considered, it can be difficult to determine what exactly the true cost of water is and the cost will and vary from region to region. Unfortunately, there is no single price that is the true cost of water.

There are a limited number of ways to cover the true cost of water, whatever it is determined to be in a particular context: transfers, tariffs, and taxes.<sup>244</sup> Transfers include monies moved into a government or public utilities' hands by a third party. Money given out by development aid agencies or banks (in the form of loans) is considered to be a transfer. While transfers are useful, they are difficult to rely on for building infrastructure, amongst other things, because aid is generally unreliable and usually runs out. Tariffs are the amount of money the consumer pays out of pocket for their water usage. For example, in Kiyindi, as previously mentioned, people pay 300-500 Ugandan shillings for a jerrycan of water (20L). The final method to recover the costs of water is through the tax base. Through taxation the government is able to subsidize to varying degrees the cost of water paid by the consumer. Both transfers and

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<sup>244</sup> OECD, "Why water pricing is an issue," in *Pricing Water Resources and Water and Sanitation Services*, OECD Publishing, 2010, 22.

taxes play a significant role in determining what the tariffs to be paid are, that is what price the consumer will have to pay for their water.

Those in favour of water pricing often claim that the “fact that the very poor do pay for water, and pay quite a bit in relative terms, suggests both that they could and would pay for piped water.”<sup>245</sup> Alongside other arguments in favour of water pricing, the ability to pay for water is often cited as reason why those in the global south should pay for the water required for subsistence. Individuals in the global south do often have to pay for their water, either at the water source (well, borehole etc.) or through the informal water sector and water vendors. However, the fact that people do pay for the water required for basic subsistence does not mean that they ought to pay for this water. If asked whether one would prefer to have unsafe water or pay for safe water (piped or otherwise) it is foolish to think anyone would answer otherwise than to say they would pay for the water. Moreover, people often pay for their water at the expense of other necessary goods and services making it difficult to claim those in such circumstances have their right to water fulfilled.

The UN calls for a pro-poor water pricing policy that would keep the cost of water as low as possible while still ensuring enough money was being paid to cover the costs of maintenance and potential expansion of the water system.<sup>246</sup> But how do we determine what this price is? And what about those who are still unable to pay the amount required for water for subsistence? Ought we deny water to those unable to pay for it? Surely not but perhaps there is more than enough evidence to suggest that this is in fact what happens to those unable to afford water in cases of water privatization.

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<sup>245</sup> Salzman, 2012, 201.

<sup>246</sup> UNESCO, 2015, 6.

In a 2006 UN-Water report, the UN notes that those from the wealthy sectors of society, almost exclusively, benefited from the private water services in the global south.<sup>247</sup> This can be said to be the result of two things: (i) high risk activities, and (ii) the MDGs. Providing water services to the poorest populations in a country is understood, by the private sectors, as a “high risk enterprise that largely lacks opportunities for economic return”<sup>248</sup> Corporations are unlikely to invest in and develop water infrastructure in poor, rural communities because the return on their investment will not be as high. Private providers would likely disconnect services to those unable to pay their water bill in order to protect the provider’s efficiency and profitability, creating mass disconnection for those living in slums and poor regions.<sup>249</sup> Public utilities must ensure that they are able to provide water to individuals, especially those who are left behind by the private water sector.<sup>250</sup>

Rural areas are seen as especially high risk by the private sector because of the population living in those areas. Often, those living in rural areas in Ghana, for example, are largely unemployed and uneducated, and often live on significantly below-average income levels. As a result, rural areas are for the most part unattractive, due to their unprofitability, to multinational corporations that are bidding for water supply and are, therefore, often “excluded

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<sup>247</sup> UNESCO, *Water, a shared responsibility: UN World Water Development Report, 2006*. Paris, France: UNESCO, 2006.

<sup>248</sup> Barlow, 2007, 61.

<sup>249</sup> Rahaman, Everett, and Neu, 2013, 561.

<sup>250</sup> The Flint, Michigan water crisis is one example of the failure of local government and public utilities to step in and provide its citizens with access to safe water. See Rob Jordan, "Stanford Water Expert on Lessons of Flint, Michigan, Crisis," Stanford News. March 11, 2016. Accessed June 02, 2016. <https://news.stanford.edu/2016/03/11/flint-water-luthy-031116/>.

from the proposals that the multinationals are bidding for.”<sup>251</sup> As Barlow succinctly argues, those people who cannot pay will not get served,<sup>252</sup> at least not by the private sector alone.

The second reason the wealthy sectors of society benefitted from the privatization of water is couched in the MDGs. As we have seen in Chapter 3, countries and nongovernmental organizations had difficulty in achieving the MDG water target of halving the proportion of people without access to safe drinking water by 2015. Cities and highly populated areas were the main target of the water MDG because those were the areas where the biggest impact could be made in the shortest amount of time. There was also a political agenda in choosing to provide water services in urban areas. Politicians enjoy working on large-scale urban projects because of their increased visibility, in comparison to small-scale projects in rural areas. Large-scale projects also require more capital which allows politicians more opportunities to misappropriate funds and engage in political corruption that benefits themselves rather than the community.<sup>253</sup>

Private investors, and governments through the use of public utilities, chose to service wealthier areas because of the ease of convenience and the increased political impact. This has been one of the biggest criticisms of the MDG water target.<sup>254</sup> Target 7C did not help the poor and marginalized populations as intended and this is where the SDGs are supposed to step in as their primary focus is alleviating poverty amongst the poorest and most marginalized

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<sup>251</sup> Ibid., 559.

<sup>252</sup> Barlow, 2007, 93.

<sup>253</sup> See World Health Organization, *GLAAS 2012 Report UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water: The Challenge of Extending and Sustaining Services*. Switzerland: World Health Organization, 2012; Joanna Esteves Mills and John Garrett. *Keeping promises: why African leaders need to deliver on their past water and sanitation commitments*. Water Aid, 2013.

<sup>254</sup> Another criticism is that the MDGs were a vehicle for promoting privatization of water services rather than a method of quickly and efficiently securing universal and sustainable access to safe water. See Langford, 2013.

populations. It is clear that urban populations benefitted from the MDG water target and not all of this benefit was from the private sector. Many of the two billion people who gained access to improved water sources did so through the public sector, and yet, they still drink unsafe water. Providing access to safe water in urban areas was still problematic since not all urban areas could be serviced because urban slums contain many narrow alleys making it virtually impossible to service the areas.

While the pro-water pricing proponents claim the poor's paying for water shows they can and would continue to pay for safe drinking water, there continues to be one remaining problem: how much should people pay, if at all? It is difficult to determine the affordability of water services and there is no one, generalized agreement on the appropriate proportion.<sup>255</sup> A 2015 UN report asserts those unable to afford the cost of water, should be supported instead of lowering the cost of water, since lowering the cost only benefits the wealthy.<sup>256</sup> But what does this mean? How do we best support those unable to pay for the water they need for subsistence? The subsequent section of this chapter focuses on the question of whether water pricing can be said to fulfill the right to water or acts as a violation of the right to water through the examples of South Africa and Cochabamba, Bolivia.

#### **4.4 The Case of South Africa**

Various water pricing strategies have been implemented to address growing concerns about the provision of safe drinking water to citizens. When examining water pricing strategies, it is useful to determine whether a particular strategy works towards the fulfillment of the right to water or whether it is a violation of the right to water. I argue the South African water pricing

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<sup>255</sup> UNESCO, 2015, 102.

<sup>256</sup> Ibid., 103.

strategy is one strategy that works towards the fulfillment of the right to water, especially in comparison to the strategy put in place in Cochabamba, Bolivia in 2000.

When apartheid ended in 1994 South Africans elected a new government and a new constitution was established. In 1994, approximately 37.5% of South Africans lacked access to basic water supplies, a majority of whom (80%) lived in rural areas.<sup>257</sup> Exacerbating this problem further was the fact that the majority of people lacking access to basic water supplies were the blacks and other marginalized populations within the country<sup>258</sup> since during apartheid most of the nation's water was concentrated in the hands of the white minority.<sup>259</sup>

In South Africa, water provision is recognized as a function of local governments.<sup>260</sup> In 1994, the White Paper on Water Supply and Sanitation advocated for a social tariff stating “water services should be paid for by everyone except poor communities that were unable to afford basic services, in which case the state would subsidize the construction costs of the basic minimum services but not the operating, maintenance, or replacement costs.”<sup>261</sup> The white paper also argued for a system of water pricing with a minimum of three block tariffs (social tariff, normal tariff, and marginal cost tariff for high levels of consumption).<sup>262</sup>

The 1996 South African constitution explicitly recognizes the right to sufficient water and the new constitution “requires the consideration of international law in interpreting its Bill of Rights.”<sup>263</sup> This means that the South African government recognizes the right to water and

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<sup>257</sup> Bluemel, 2004, 978

<sup>258</sup> Ibid.

<sup>259</sup> Barbara Schreiner, “Water Pricing: The Case of South Africa.” In *Water Pricing Experiences and Innovations*. E-Book: Springer, 2015, 290.

<sup>260</sup> Schreiner, 2015, 293.

<sup>261</sup> Ibid., 302.

<sup>262</sup> Ibid.

<sup>263</sup> Bluemel, 2004, 977.



interprets this right in a very similar manner to the right to water outlined in General Comment no. 15. According to the constitution, “the right of access to sufficient water in s 27(2) should be understood to mean that the State is not obliged to provide water freely, but is under an obligation to create mechanisms that enable people to have access to sufficient water.”<sup>264</sup> In spite of this, the right to water has traditionally been interpreted by the South African government as requiring the government to provide “a free minimum level of water necessary for survival, above which a progressive pricing scheme is used for cost recovery.”<sup>265</sup>

In 2000 what is known as the Principle of Free Basic Water was introduced in South Africa. The principle argued “the ability to pay for water could not be allowed to prevent poor South Africans from accessing” the right to water and, in turn, this meant the social tariff (6kl/household/month) “should be provided free of charge”, though interpretation of this principle varies across municipalities.<sup>266</sup>

The right to sufficient water under the South African constitution must also be defined in order for the government to make any meaningful steps towards its fulfillment. Sufficient water is understood to refer to “the quality and quantity required to satisfy basic domestic needs.”<sup>267</sup> The right to water in this context refers to the minimum quantity of water necessary for meeting basic needs that is also free from harmful substances. The Department of Water Affairs and Forestry in South Africa set the minimum quantity of water at 25L/person/day and “the

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<sup>264</sup> *Economic and Social Rights 3rd Report*. “Chapter Eight: The Right to Sufficient Water.” Report. South African Government, 1999/2000. Accessed May 3, 2016. <http://www.gov.za/documents/economic-and-social-rights-3rd-report-19992000>, 298

<sup>265</sup> Bluemel, 2004, 978.

<sup>266</sup> *Ibid.*

<sup>267</sup> *Economic and Social Rights 3rd Report*. “Chapter Eight: The Right to Sufficient Water.” Report. South African Government, 1999/2000, 299.

minimum cartage distance at 200 metres, with consideration for varying landscapes.”<sup>268</sup> In an effort to combat disparity in access to basic water supplies, the South African government provided free basic water supplies to approximately 27 million people (60% of the population) between 1996-2002 and it was anticipated that free basic water supplies could “be realized for the entire population by 2009.”<sup>269</sup> As of 2015, approximately 95% of the population is said to have “access to improved water sources for domestic use.”<sup>270</sup> Just as there were many problems with the way the MDGs’ progress was measured, it is unlikely that 95% of South Africans drink safe water. This number is likely exaggerated since it is important to remember that having access to an improved water source does not mean people have sustainable access to safe water in adequate quantities.

The case of South Africa, nevertheless, is atypical since the country already had well functioning infrastructure in place and had “substantial institutional and technical capacities” as well as the economic development necessary for the implementation of the right to sufficient water.<sup>271</sup> There are at least three problems associated with the South African water pricing strategy. First, the overall improvement in efficiency of the water infrastructure resulted in the elimination of systemic losses of water. While good for the efficiency of the system, water leakage points serve as places of water access that many impoverished people depend on.<sup>272</sup> Hence, the better efficiency of the water pipes resulted in the loss of water points for many people. Second, South Africa, while quite developed, faces difficulties in fully implementing its right to water as a result of financial constraints, inadequate water sources, and local

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<sup>268</sup> Ibid.

<sup>269</sup> Bluemel, 2004, 979.

<sup>270</sup> Schreiner, 2015, 290.

<sup>271</sup> Bluemel, 2004, 979.

<sup>272</sup> Ibid.

implementation limitations.<sup>273</sup> Third, and finally, the poor have been “disproportionately burdened by connection fees and tariff schedules designed to achieve full cost recovery.”<sup>274</sup> Like many development projects, it is the marginalized groups who bear the brunt of the cost of development.

These criticisms do not go unnoticed by the South African government. In the 3<sup>rd</sup> *Economic and Social Rights Report*, several critiques are outlined and responded to. The report concludes by stating:

Ideally, water should be free so that everyone can have access to water. Currently, the right of access to water is not enjoyed by everyone because water is not delivered free of charge to all the people of South Africa. The most vulnerable amongst the sectors of the community, the unemployed, people who live in dire poverty are amongst those denied access to the right of access to water. The cause of this is due to the inability to pay for water, uncompleted, abandoned and dysfunctional projects, which were initiated to supply water, infrastructure problems, unsolved problems between and amongst service providers (local authorities) who deliver water and sanitation services to the people.<sup>275</sup>

Hence, the report recognizes the need for all parties (local, provincial, and national) to make coordinated efforts enabling “the government to ensure, within available resources, the progressive realization of access to sufficient water.”<sup>276</sup>

Although South Africa has not yet been able to achieve universal access to basic water, an admirable goal, it has made significant strides in working towards the fulfillment of the right to water. The provision of the minimum amount of water necessary for subsistence (50L/person/day according to Gleick) ought to be provided free of charge to consumers and ought to be paid for through taxes. In this way, all inhabitants of a nation would be able to have

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<sup>273</sup> Ibid., 980

<sup>274</sup> Ibid.

<sup>275</sup> *Economic and Social Rights 3rd Report*. “Chapter Eight: The Right to Sufficient Water.” Report. South African Government, 1999/2000, 320.

<sup>276</sup> Ibid.

meaningful access to safe water regardless of their (in)ability to pay for the water. In cases where this is possible, the government would be fulfilling its obligations to protect from deprivation through the designing of institutions that do not violate our duty to avoid depriving others. Governments would also be fulfilling their duty to aid since they would be providing access to safe water to those who were their special responsibility. In respecting these duties, the government is also increasing its ability to avoid depriving individuals of their access to water.

#### **4.4.1 Cochabamba, Bolivia**

While the South African water pricing strategy may be a clear example of water pricing being used to fulfill the right to water, the case of Cochabamba, Bolivia is a clear example of the right to water being violated. The Cochabamba case study is an often-cited example of the extreme greed of corporations and an example of how we ought not go about *fulfilling* the right to water. In 1999, the World Bank recommended Cochabamba's municipal water supply company be privatized. Later that year, government subsidies ended which allowed for the privatization of water through the Drinking Water and Sanitation Law.<sup>277</sup> Water costs soared under the international water giant Bechtel, that was trying to recover its costs, and "in a country where the minimum wage is less than US\$60 a month, many users received water bills of US\$20 a month."<sup>278</sup> People could not afford to pay the high increase in their water bills, and those unable to pay had their water cut off. Protests against water privatization began almost immediately and after four months the Bolivian government terminated the privatization concession and forced Bechtel out of Cochabamba.<sup>279</sup>

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<sup>277</sup> Shiva, 2002, 102.

<sup>278</sup> Barlow, 2007, 104.

<sup>279</sup> Salzman, 2013, 193.

Cochabamba is a case where the water pricing strategy used constituted a violation of the right to water. Recall, we have three duties correlating to the right to water:

- (I) To avoid depriving (respect)
- (II) To protect from deprivation (protect)
  - a. By enforcing duty (I); and
  - b. By designing institutions that avoid the creation of strong incentives to violate duty (I)
- (III) To aid the deprived (fulfill)
  - a. Who are one's special responsibility;
  - b. Who are victims of social failures in the performance of duties (I), (IIa), and (IIb); and
  - c. Who are victims of natural disaster.

In the Cochabamba example, the duty to avoid depriving is not being satisfied. Bechtel and its subsidiaries turned off the water for those who were unable to pay and under the privatization concession people were even charged for the rainwater they collected in cisterns.<sup>280</sup> Hence, if one could not pay for the water, they were unable to access water in any meaningful way and were, therefore, deprived of their right to water. In this way the duty to respect the right to water went unmet. The duty to protect from deprivation also went unmet since there was no enforcement of the duty to avoid depriving. Moreover, the institutions in place were designed in ways that violated the duty to respect, the exact opposite of duty II. As a result of the violations of duty I (to respect) and duty II (to protect) duty III (to fulfill) is also unmet in the Cochabamba scenario.

#### **4.5 Taxation as a Strategy for Fulfillment of the Right to Water**

Water pricing strategies can be used to secure sustainable access to adequate quantities and quality of water. One way this could be achieved is through a national tax plan. In Canada, for example, taxes are often used to cover the cost of services considered so important that no one ought to go without them. Taxes are used to pay for universal health, hospitals, schools, post-

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<sup>280</sup> Barlow, 2007, 104.

secondary education, welfare, unemployment insurance, road works, and infrastructure. If we consider that for Shue, our subsistence rights include access to unpolluted air, unpolluted water, adequate food and clothing, and minimal preventative public healthcare, then Canada should expand what it pays through taxes to include safe water.

However, not everyone believes that safe water should be provided through taxes and/or public revenue. Bruce Pardy argues providing water through taxation is a political ideology whereby “water must be provided by the government rather than by private means, and the costs of water systems cannot be borne by those who use them.”<sup>281</sup> Similarly, arguments can be made about the unfairness for others who are forced to shoulder the burden of paying for water they do not use. These criticisms fall short in at least three ways.

First, providing water through taxation does not necessarily entail the political ideology “water must be provided by governments alone.” Taxes could be used to cover the minimum amount of water required for subsistence. The water user would pay out of pocket for water used above this level and this could be provided by both public and private means.

Second, Pardy argues a system where taxes pay for water means those who use it do not carry the costs of the water system. This is untrue. Canadians would be required to cover the costs of the water system above the 50L /person/day directly. It is not as if water users would be able to truly exploit the system and get more water for free so that they did not have pay out of pocket.

Third, our taxes already cover services (healthcare) that function in a similar manner to the way taxes would cover the cost of water. As a Canadian, I can visit the doctor or emergency

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<sup>281</sup> Pardy, 2011, 914.

room and not have to pay out of pocket for my visit. Healthcare usage above this (prescriptions, medical equipment, and some specialists (physiotherapist etc.) is paid for by the user unless they have other user-paid health insurance that otherwise covers this cost. We as a society understand that no one in Canada ought to be denied access to healthcare services and, likewise, no one ought to be denied access to safe water. Hence, a water system that provides a basic amount of water free of charge (paid for through taxes) would be beneficial and work towards the fulfillment and social guarantee of the human right to water. Those using water above the basic amount would be charged for the service.

#### **4.5.1 Global Taxes and the Provision of Safe Water**

Covering the cost of 50L/person/day through taxes in Canada may be quite possible. It is probable that many nations in the global north can afford the expense of providing for a basic amount of water. Unfortunately, not all countries have the ability to pay for this expense. As Brock points out, it is quite difficult for countries in the global south to sustain efficient, effective and equitable taxation systems because of at least six reasons<sup>282</sup>:

1. Tax administration is weak in the global south and so taxes often fail to be collected.
2. Large informal sectors, including the informal water sector, restrict a nation's ability to collect taxes from all citizens fairly.
3. Citizens must be willing to pay and comply with tax laws. When citizens feel they do not benefit fairly from taxes they may be unwilling to pay.
4. The complex relationships between citizens and their governments and the expectation of good governance when taxes are paid.
5. The creation of a favourable tax environment (tax havens etc.) to attract attention from foreign investors.<sup>283</sup>
6. Non-transparent resource sales that enables corruption and theft of resources.

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<sup>282</sup> Brock, 2015, 189.

<sup>283</sup> An estimated US \$6.6 trillion was lost in developing and emerging economies between 2003-2012. Approximately US \$385 billion is lost every year in developing countries as a result of tax evasion. In 1999, Microsoft paid no tax on their reported a profit of 12.3 billion. See Dev Kar and Joseph Spanjers, 2014; Brock, 2008a, 2015.

It is for these reasons, and many others, that it may be difficult for governments in the global south to use taxation as a strategy for fulfilling the right to water for its citizens.

A cosmopolitan, like Brock, would argue we have no good reason to prioritize the needs of our compatriots over the needs of our non-compatriots anyway. Especially when the non-basic needs of our compatriots are being prioritized over the basic needs of our non-compatriots.<sup>284</sup> If we are willing to accept that our governments should provide safe water then perhaps we should also accept that we have no good reason to limit this provision to compatriots.

If a nation is unable to fulfill the rights of its citizens then who is obligated to step in and ensure rights are being fulfilled? Many authors argue the international community has an obligation to ensure rights are being met in foreign nations and a global tax initiative is one strategy that could be employed to eradicate poverty, among other things. Pogge argues for a Global Resources Dividend whereby any time a government uses or sells off resources, they would have to pay a small part (1%) of the resource's value. This would raise an estimated US \$300 billion per year.<sup>285</sup> Brock also identifies a number of ways global tax initiatives could function and argues that they could be largely successful at raising the funds necessary to address the underlying causes of poverty. In support of her position, Brock provides a number of examples where global taxes are already used and working including the carbon tax and air-ticket tax.<sup>286</sup>

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<sup>284</sup> Brock, 2005, 2008a, 2008b, and 2015.

<sup>285</sup> Thomas Pogge, "Eradicating Systematic Poverty: Brief for a Global Resources Dividend," *Journal of Human Development* 2, no.1 (2001): 59-77.

<sup>286</sup> Brock, 2008a, 2015.



Roughly US \$1.25-\$2.25 trillion dollars per year for 20 years is needed to implement water-related sustainable development to meet the Sustainable Development Goals.<sup>287</sup> A global tax initiative could raise many billions of dollars in support of sustainable access to safe water. Eliminating tax havens frees up large amounts of taxable money that could also contribute to the provision of safe water worldwide. These are some of the many possible strategies that could be employed to cover the cost of providing 50L/person/day of safe water.

#### **4.6 Conclusion**

Water pricing strategies need not necessarily violate the right to water. In some cases, water pricing strategies serve as a pathway towards the fulfillment of the right to water because long-term service provisioning of water requires sustainable financing which pricing strategies may be able to provide. This chapter discussed the ways water was traditionally understood under The Right of Thirst and the Roman *lacus* system. In both cases, water was recognized as a kind of communal property in the sense that no one who was thirsty would be denied access to the water.

Current water pricing strategies can be and have been criticized as systems that sometimes deny people their right to water e.g. Cochabamba, Bolivia. Obviously, Cochabamba represents an extreme version of water privatization and it is important to note that water pricing does not entail the privatization of water. On the other extreme, however, is the South African example where taxes pay for the 25L/person/day that is deemed required for subsistence purposes. Upon inspection of this case, I cannot help but think about the connections between the South African example and historic examples provided. Perhaps what is needed for the realization of the human right to water is a shift in thinking – a shift back towards viewing water as common property. Or

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<sup>287</sup> Corinne J. Schuster-Wallace and Robert Sandford. *Water in the World We Want*. United Nations University Institute for Water, Environment and Health and United Nations Office for Sustainable Development, 2015, 38.

at least, a shift back into thinking that no one ought to be deprived of water and that no one should be left thirsty or left to drink unsafe water. According to a commons strategy, community resources, including water, would be “actively protected and managed for the good and benefit of all.”<sup>288</sup> Perhaps a system of taxes, at a national or international level, covering the basic requirement of water is the best chance we have at fulfilling the human right to water and ensuring equitable access to safe water for all.

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<sup>288</sup> Cooper, Nathan, Andrew Swan, and David Townend. “A confluence of new technology and the right to water: experience and potential from South Africa’s constitution and commons.” *Ethics and Information Technology* 16, no. 2 (2014): 130.

## **Chapter 5**

### **Conclusion**

In a world of increasing water scarcity, securing meaningful access to safe water is crucial. With varying estimates of how much water is required to live, one thing is constant: people need sustainable access to safe water in adequate quantities to lead dignified lives. One of the most significant ways the global order provides access to safe water is through taxation. There are several good reasons to believe that we, as citizens of nations and the global order, are obligated to cover the cost of basic water. As I have argued, there are two ways taxation can serve to provide access to the water needed for subsistence purposes. First, individual nations could use their tax revenue to cover the cost of a minimum quantity of safe water (50L/person/day). Second, a global tax could be instituted to cover the cost of providing access to safe water, among other things.

#### **5.1 The Duty to Avoid Depriving**

There are strong reasons to believe that taxation policies would ensure our duties were being fulfilled. First and foremost, we have a duty not to deprive others of their right to water. Many human rights violations can be avoided by respecting the rights of others. This can be done at both a national and international level. Governments ought not deny their citizens of their right to water. Nations, corporations, and international organizations ought not deny others their right to water. Governments should ensure they are protecting the quantity and quality of water to ensure their citizens and the citizens of other nations can access safe water.

This notion should be expanded into the international arena so that nations, international organizations, and corporations are not depriving global citizens of their right to water. If, for

example, a government is doing its best to protect the water rights of its citizens, then it should not allow a corporation access to its water in ways that threaten its citizens' rights. International organizations (IMF and WB) should not include water privatization conditions on loans if these conditions result in the direct or indirect deprivation of the right to water. When international organizations and foreign governments engage in forced negotiations with other countries they deprive countries of their ability to ensure their citizens' rights are met. Continued pressure to privatize water systems from the IMF and WB may result in governments being unable to ensure the right to water is fulfilled. Additionally, water pricing strategies, like the one employed in Cochabamba, violate the right to water since the cost of water becomes unaffordable or is paid for at the expense of other important goods and services.

There are a number of reasons why our duty not to deprive is so important in the fulfillment of the right to water. Pogge argues the only way we can violate rights is through failing to fulfill our obligations not to deprive others of their rights. On this limited account of rights violations, we can see the right to water is being violated since people are being deprived, both directly and indirectly, of their right to water. We must stop violating the human right to water and respect the right instead. To respect the right to water we must stop (i) polluting our water systems; (ii) engaging in exploitative relations with other countries; (iii) creating and allowing tax havens to exist; and (iv): charging people for water they cannot afford. Humanity must value the human right to water and its correlative duties.

## **5.2 The Duty to Protect From Deprivation**

We, according to Shue, have a second duty: to protect others from rights deprivation. This is typically achieved through the enforcement of the abovementioned duty (that is, through respecting the right to water) and by designing institutions that do not encourage violations.

Protecting from deprivation requires the enforcement of the duty to respect the right to water. Changing the way our social and international institutions function is another way to fulfill our obligations. The IMF and WB should no longer require nations to sell off water as part of SAPs to protect from water deprivation. This involves a restructuring of the IMF and WB to ensure people's rights are not violated as part of the loan conditions. International organizations supporting the protection of water rights would also act as a fulfillment of our duty. If these measures were taken, it would be less likely that people would be unable to afford to pay for water services. In this way, strategies could be employed, using new institutional frameworks to ensure people are able to afford safe water without sacrificing other rights. As we have seen, covering the cost of a minimum amount of water (50L/person/day) would also serve as a way to protect from deprivation and aid the deprived.

### **5.3 The Duty to Aid the Deprived**

Our final duty is to aid those deprived of access to water who (i) are one's special responsibility; (ii) are victims of social failures in the performance of the abovementioned duties; and (iii) are victims of natural disasters. People and nations who are one's special responsibility include those whose rights we have violated in the past. These remedial duties are created when we violate the rights of others through action or omission. In this way, nations in the global north can and do, as argued in chapter 2, have duties to fulfill the rights of those in the global south.<sup>289</sup> As a result of globalization, we also have duties to fulfill the rights of those who are victims of social failures, even in other countries. Finally, it is important to recognize that we also have duties to aid those who are deprived of water by natural disasters.

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<sup>289</sup> Wealthy individuals also have duties to the poor within their own nations.

## **5.4 Conclusion**

This thesis argued safe water is a basic moral human right recognized in the international arena. Through General Comment no. 15 and Resolution 15/9, access to safe water and sanitation services has become an international priority. Building on this, I argued there are at least three duties correlating to the right to water: the duty to respect, the duty to protect, and the duty to aid. These duties require us (individuals, governments, international institutions) to ensure the right to water is being fulfilled and socially guaranteed. Next, I examined two strategies being employed to fulfill the human right to water. The Millennium Development Goals resulted in increased attention for providing access to safe water, but fell short of their target. In light of this failure, the SDG #6 must ensure sustainable access to safe water in adequate quantities. Water pricing, a connected but independent strategy, has shown progress in the realization of the right to water. However, water pricing can result in violations and, if using water pricing strategies, we should be careful the strategy employed is fulfilling, rather than violating, the right to water. Ultimately, I suggest a system of tiered water pricing, where the bottom tier is covered through taxes (either national or international), ought to be employed to secure the human right to water. If we take these steps and act on our obligations then we will be well on our way to socially guaranteeing and fulfilling the human right to water.

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